1984) (interpreting *Hayden*, 387 U.S. 294). *See State v. Wilson*, 467 So. 2d 503, 517 (La. 1985). ("By any standard, the detectives' conclusion that the bloodstained clothing would eventually aid in the conviction of Stephen Stinson's murderer is reasonable. The defendant's bloodstained clothing potentially constituted persuasive circumstantial evidence of his involvement in the homicide.")

One possible argument to make in our case for some of the warrants is that at the time those warrants were issued, the victims were missing, not dead—the argument might be that the warrant didn't establish probable cause that the objects sought would contain evidence of a crime. Many, if not all, of the warrants state that the property "constitutes evidence of the violation of No charge at this time of the Louisiana Revised Statutes." Even though what happened to the victims was later determined to be a crime (murder), it could be argued that warrants for these items were improper because they did not properly relate to the collection of evidence in relation to that crime at the time they were issued; as warrants that were only properly concerned with the location of missing persons, they were effectively warrants for something unrelated. The *Griffith* case is an instance of a warrant failing the nexus requirement in a similar way. The *Griffith* court held that an arrest warrant that provided a detailed description of the purposes justifying an *arrest* failed to establish probable cause for a *search*:

> Here, the lion's share of the affidavit supporting the warrant application is devoted to establishing Griffith's suspected involvement as the getaway driver in a homicide. That information might have established probable cause to arrest Griffith for his participation in the crime. The warrant application, though, was for a search warrant, not an arrest warrant. And to obtain a warrant to search for and seize a suspect's possessions or property, the government must do more than show probable cause to arrest him. The government failed to make the requisite showing in this case.

United States v. Griffith, 867 F.3d 1265, 1271 (D.C. Cir. 2017). Following the logic of the *Griffith* case, we might argue that a warrant issued in order to locate a missing person does not automatically become a warrant for collection of evidence in relation to the murder of those persons.

Furthermore, the United States Supreme Court has stated generally that the constitutionality of police officers' conduct "must [be] judge[d] . . . in light of the information available to them at the time they acted." *Maryland v. Garrison*, 480 U.S. 79, 85 (1987)). *See also Florida v. J.L.*, 529 U.S. 266, 271 (2000) ("The reasonableness of official suspicion must be measured by what the officers knew before they conducted their search"); *United States v. Jacobsen*, 466 U.S. 109, 115 (1984) ("[t]he reasonableness of an official invasion of the citizen's privacy must be appraised on the basis of the facts as they existed at the time that invasion occurred"). The key point here is that the officers in this case did not know the victims were dead.

D. Conclusory Statements

Warrants must provide the reviewing magistrate or judicial officer with a "substantial basis for determining the existence of probable cause," meaning that factual information, not just suspicion and belief, must be included in the warrant or incorporated affidavit; the magistrate's judgment cannot be "mere ratification of the bare conclusions of others." *Illinois v. Gates*, 462 U.S. 213, 239 (1983). The Supreme Court has said there is no "prescribed set of rules" for what represents a conclusory statement. *Id.* at 239. However, affidavits that are "bare bones" (*United States v. Leon*, 468 U.S. 897, 915 (1984)) are automatically deficient under Supreme Court precedent. *See Nathanson v. United States*, 290 U.S. 41 (1933) (warrant deficient where affidavit stated the affiant "has cause to suspect and does believe that" liquor illegally brought into the

United States was located on certain premises; "mere affirmance of belief or suspicion is not enough"); *Aguilar v. Texas,* 378 U.S. 108 (1964) (warrant deficient where affidavit stated "affiants have received reliable information from a credible person and believe" that heroin was stored in a home.); *Riggan v. Virginia*, 384 U.S. 152 (1966) (per curiam, holding the case is controlled by *Aguilar*). Assertions that the person to be arrested or whose house is to be searched is a "known criminal" or is "known" to deal in narcotics are accorded "no weight," and therefore cannot add to the informational value of an otherwise deficient affidavit. *Spinelli v. United States*, 393 U.S. 410, 414 (1969).[11]

One potential challenge to warrants that contain factual information beyond the "bare bones" minimum might be the suggestion that they are circular, and therefore conclusory, because they are entirely based on the beliefs of law enforcement and motivated informants. Unfortunately, the Supreme Court has cautioned that informant's tips should not be subject to "excessively technical dissection." *Massachusetts v. Upton,* 466 U.S. 727, 732 (1984) (citing *Gates*, 462 U.S. at 234–35). An informant's basis of knowledge and his or her veracity are to be taken only as "relevant considerations in the totality of circumstances analysis that traditionally has guided probable cause determinations." *Gates*, 462 U.S. at 233.

The Louisiana Supreme Court has similarly held that the credibility determinations regarding the factual statements of police officers and confidential informants do not weigh heavily on an evaluation of the affidavit unless the defense's allegation is that the statements are false (which would prompt a hearing under *Franks v. Delaware*, 438 U.S. 154 (1978)). *See, e.g., State v. Long*, 03-2592, p. 9-10 (La. 9/9/04), 884 So. 2d 1176, 1182 (warrant sufficient where officer presented only information from confidential informants and officer's own personal

[11] The Sixth Circuit has held that allegations in the warrant that a person consorts with "known" criminals or narcotics dealers are similarly insufficient. *See United States v. Hatcher*, 473 F.2d 321 (6th Cir. 1973).

knowledge of defendant's history with narcotics). Reliance on informants is not deadly in part because of the court's trust in law enforcement to balance their credibility—"an informant's tip can be significantly buttressed if either independent observations by the affiant corroborate sufficient details of the tip (whether suspicious or not) to negate the possibility that the informant fabricated his report, or independent observations by the affiant contribute to a showing of probable cause by revealing not merely normal patterns of activity but activity that reasonably arouses suspicion." *State v. Baker*, 389 So. 2d 1289, 1293 (La. 1980). All that said, some affidavits may be too circular: in one case, an affidavit was held deficient where it was based primarily on hearsay and "double hearsay" relayed by an informant. *State v. Richards*, 357 So. 2d 1128, 1131–32 (La. 1978).

E. Jurisdiction

1. Identity-based jurisdiction challenges

The Supreme Court held in *Shadwick v. City of Tampa* that warrant-granting judicial officers or magistrates must meet two tests: they must be (1) "neutral and detached"; and (2) "capable of determining whether probable cause exists for the requested arrest or search." *Shadwick v. Tampa*, 407 U.S. 345, 350 (1972); *accord United States v. Harris*, 566 F.3d 422, 433 (5th Cir. 2009), *State v. Umezulike*, 03-1404, p. 9 (La. 2/25/04), 866 So. 2d 794, 800. Regarding the capability test, a magistrate or judicial officer does not have to be a lawyer so long as they satisfy these tests, though being a lawyer, and certainly a judge, can satisfy this prong (*see Shadwick*, authorizing a municipal court clerk's issuance of a warrant).

Regarding the neutrality and detachment test, the U.S. Supreme Court has found violations where the magistrate: (1) had a pecuniary interest in issuing the warrant (*see Connally v. Georgia*, 429 U.S. 245, 251 (1977)), or (2) actively participated in the police investigation underlying the warrant *(see Lo–Ji Sales, Inc. v. New York*, 442 U.S. 319, 327–28 (1979)). Regarding this second point, the Supreme Court stated in *Shadwick* that "[w]hatever else neutrality and detachment might entail, it is clear that they require severance and disengagement from activities of law enforcement." 407 U.S. at 352. A magistrate cannot "serve merely as a rubber stamp for the police." *United States v. Leon*, 468 U.S. 897, 914 (1984) (quoting *Aguilar v. State of Texas*, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723).[12]

2. Territory and authority-based jurisdiction challenges

In federal court, U.S. magistrate judges may issue a warrant authorizing a search outside of their assigned district. Fed. R. Crim. P. 41(b)(2)–(6). However, state judges are only able to do so where they are authorized by the laws of the state.[13] The Louisiana Code of Criminal Procedure authorizes a judge to issue a warrant for "any thing within *the territorial jurisdiction of the court*," provided it falls into one of three enumerated categories, including objects that "[m]ay be evidence tending to prove the commission of an offense." La. C.Cr.P., art. 161 (emphasis added); *see also State v. Green*, 02-1022 (La. 12/4/02), 831 So. 2d 962.

Of the nine warrants we challenge on the basis of jurisdiction, five concern phone records, three concern Facebook accounts, and one concerns a Snapchat account. One argument to make is that each of the respective companies (Verizon, T-Mobile, Facebook, and Snap, Inc.) are "outside" the territorial jurisdiction of the Louisiana court issuing the warrants because the premises listed for those companies on the warrants themselves are outside Louisiana (Verizon

[12] The neutrality and detachment test seems to be a low bar to clear. Other courts have found that a magistrate's recusal in order to avoid the appearance of impropriety is not enough on its own to establish bias (*Davis v. State*, 367 Ark. 341, 240 S.W.3d 110 (2006)), and neither is the basic fact that the magistrate was previously in a position adverse to the defendant (*United States v. Bowling*, 619 F.3d 1175 (10th Cir. 2010)). The Fifth Circuit has held that a judge who represented the defendant previously was not necessarily biased. *See United States v. Harris*, 566 F.3d 422, 433 (5th Cir. 2009).

[13] *See State v. Frazier*, 558 S.W.3d 145 (Tenn. 2018) (holding a circuit court judge in Tennessee lacked jurisdiction to issue search warrants for property outside judge's defined judicial district; could only issue if expanded geographical jurisdiction obtained by interchange, designation, appointment, or other lawful means).

and T-Mobile were listed as located in New Jersey, Facebook and Snapchat as located in California).

There may also be an argument about statutory authority for the seizures of the records. The phone record warrants list their source of authority as Revised Statutes 15:1314–1316 of the Louisiana Code of Criminal Procedure. However, 1314–16 seem to only endow courts with the authority to grant law enforcement the use of a "pen register" or "trap and trace device." It's not clear why this would entitle courts to authorize the compilation of past records. Additionally, the phone record and social media warrants list their authority as the Stored Communications Act (SCA), 18 U.S.C. § 2703. The State also argues in their opposition to **[one of our motions]** that the SCA authorizes these warrants. This does not seem exactly right. The SCA states that a governmental entity "may require a provider of remote computing service to disclose the contents of any wire or electronic communication… only pursuant to a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures[)]…." 18 U.S.C. § 2703.[14] So, while Louisiana procedures will certainly control, Louisiana courts are not necessarily empowered to grant a warrant for these records without further statutory authority from Louisiana.

There are a variety of cases gesturing to the fact that individuals have reasonable expectations of privacy in the electronic contents of a cell phone. *See U.S. v. Zavala*, 541 F.3d 562 (5th Cir. 2008) (stating that an individual has a reasonable expectation of privacy in the "wealth of private information" within a cell phone, including emails, text messages, call histories, address books, and subscriber numbers); *U.S. v. Finley*, 477 F.3d 250 (5th Cir. 2007)

[14] Section (b) also makes use of this "state procedures" language: "… if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures…." 18 U.S.C. § 2703(b)(1), (b)(1)(A).

(finding that defendant had a reasonable expectation of privacy in the call history and text messages on his cell phone); *State v. Bone,* 107 So. 3d 49 (La. App. 5th Cir. 9/11/12) (finding that the defendant had a reasonable expectation of privacy in the text messages sent and received on his cell phone). What can be said of cell phones might also be said about social media—take, for example, what the U.S. Supreme Court has said about cell communications:

> Cell phone and text message communications are so pervasive that some persons may consider them to be essential means or necessary instruments for self-expression, even self-identification. That might strengthen the case for an expectation of privacy.

City of Ontario v. Quon, 560 U.S. 746 (2010). However, as the State notes in their opposition, some of the phone records and social media accounts belonged to the victims, not the defendant.

A response to this might be Justice Gorsuch's dissenting opinion in *Carpenter v. United States,*[15] which, calling for a property-based conception of the Fourth Amendment's protection as a replacement of the current privacy-based regime, noted that the original case launching the privacy conception, *Katz v. United States,*[16] has been effectively undone by successive cases *Smith v. Maryland*[17] and *United States v. Miller*[18] and the ubiquity of electronic communication facilitated by third parties. Unfortunately, the *Carpenter* majority upheld the seizure of cell site location information (CSLI) from wireless carriers so long as there was a warrant supported by probable cause, and the two Louisiana cases I saw that cited *Carpenter* did so in order to uphold similar seizures. *See State v. Davis*, 18-485 (La. App. 5th Cir. 4/10/19), 269 So. 3d 1123, *writ denied,* 19-716 (La. 11/12/19), 282 So. 3d 229; *see also State v. Lynn,* 52,125 (La. App. 2nd Cir. 8/15/18), 251 So. 3d 1262, *writ denied,* 18-1529 (La. 4/15/19), 267 So. 3d 1129.

[15] *Carpenter v. United States*, 138 S.Ct. 2206 (2018) (Gorsuch, J., dissenting).
[16] *Katz v. United States,* 389 U.S. 347, 361, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967) (Harlan, J., concurring)
[17] *Smith v. Maryland,* 442 U.S. 735, 743–744, 99 S.Ct. 2577, 61 L.Ed.2d 220 (1979).
[18] *United States v. Miller,* 425 U.S. 435, 96 S.Ct. 1619, 48 L.Ed.2d 71 (1976).

[The remainder of the memo, which analyzes applications of the above law to individual search warrants from the case, has been cut for length and confidentiality.]

Applicant Details

First Name	**Sophia**
Middle Initial	**I**
Last Name	**Dillon-Davidson**
Citizenship Status	**U. S. Citizen**
Email Address	**sophiadd12@gmail.com**
Address	**Address** Street **67 S Mt Holyoke Dr** City **Amherst** State/Territory **Massachusetts** Zip **01002**
Contact Phone Number	**4138351516**

Applicant Education

BA/BS From	**Wellesley College**
Date of BA/BS	**May 2018**
JD/LLB From	**The University of Michigan Law School** **http://www.law.umich.edu/currentstudents/careerservices**
Date of JD/LLB	**May 6, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Michigan Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Moran, David
morand@umich.edu
734-615-5419
Santarosa, Veronica
aokisan@umich.edu
734-764-7335
Bromberg, Howard
hbromber@umich.edu
734-764-5564

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Sophia Dillon-Davidson
67 S. Mt. Holyoke Dr.
Amherst, Massachusetts 01002
(413) 835-1516
sdillond@umich.edu

June 12, 2023

The Honorable Jamar K. Walker
U.S. District Court for the Eastern District of Virginia
Walter E. Hoffman U.S. Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a rising third-year student at the University of Michigan Law School and I am applying for a clerkship in your chambers for the 2024-2025 term or the next available term.

I have attached my resume, transcript, and a writing sample for your review. I have also attached letters of recommendation from the following professors and supervisors:

- Professor Howard Bromberg: hbromber@umich.edu, (734) 764-5564
- Professor David A. Moran: morand@umich.edu, (734) 615-5419
- Professor Veronica Santarosa: aokisan@umich.edu, (734) 764-7335

Thank you for your consideration.

Respectfully,

Sophia Dillon-Davidson

Sophia Dillon-Davidson

67 S. Mt. Holyoke Dr., Amherst, Massachusetts 01002
(413) 835-1516 • sdillond@umich.edu

EDUCATION

UNIVERSITY OF MICHIGAN LAW SCHOOL — Ann Arbor, MI
Juris Doctor GPA: 3.877 (historically top 10%) — Expected May 2024
Journal: Michigan Law Review, *Senior Editor*
Honors: Dean's Scholarship
Best Appellate Brief, Section E

WELLESLEY COLLEGE — Wellesley, MA
Bachelor of Arts in Economics — June 2018
Activities: Wellesley College Varsity Swim Team

EXPERIENCE

SIMPSON THACHER & BARTLETT — Washington, D.C.
Summer Associate — May – July 2023

MICHIGAN INNOCENCE CLINIC — Ann Arbor, MI
Student Attorney — May – July 2022
- Drafted memoranda summarizing information in trial transcripts and FOIA documentation.
- Researched and drafted a motion to request a refund of court fees paid by an exonerated client and a reply brief countering the prosecution's response to a 6.500 Motion for Relief from Judgment.
- Communicated with clients and expert witnesses and helped conduct investigations into claims of innocence.

HORST FRISCH, INC. — Washington, D.C.
Analyst — August 2018 – July 2021
- Gathered and analyzed financial data for transfer pricing and international tax matters for clients including multinational corporations and tax authorities.
- Assisted in writing, editing, and checking expert witness reports for transfer pricing litigation.
- Assisted with research on the effects of the 2017 Tax Cuts and Jobs Act on companies' effective tax rates. Results of this research published in the May 27, 2019 and July 29, 2019 editions of *Tax Notes International.*

WELLESLEY COLLEGE OFFICE OF INSTITUTIONAL RESEARCH — Wellesley, MA
Research Assistant — September 2017 – May 2018
- Analyzed and cleaned quantitative data using SPSS and Excel to evaluate the needs and satisfaction of students and alumnae to help direct institutional decision-making.
- Created tables, graphs, and infographics along with written summaries to illustrate and highlight results.

VENTUREWELL — Hadley, MA
Research and Evaluation Intern — January – March 2017
- Performed quantitative and qualitative data analysis to evaluate the effectiveness of VentureWell's programs.
- Assisted in writing and editing the annual report of a program evaluating the progress of innovations and teams participating in the program and the effectiveness of instructors.

ADDITIONAL

Languages: German (intermediate)
Interests: Swimming, playing cello

Control No: E196664901 Issue Date: 05/30/2023 Page 1

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Dillon-Davidson,Sophia
Student#: 17796780

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2021			**(August 30, 2021 To December 17, 2021)**					
LAW	510	001	Civil Procedure	Nicholas Bagley	4.00	4.00	4.00	A-
LAW	520	001	Contracts	John Pottow	4.00	4.00	4.00	A-
LAW	580	001	Torts	Roseanna Sommers	4.00	4.00	4.00	A-
LAW	593	001	Legal Practice Skills I	Howard Bromberg	2.00		2.00	H
LAW	598	001	Legal Pract:Writing & Analysis	Howard Bromberg	1.00		1.00	H
Term Total				**GPA: 3.700**	**15.00**	**12.00**	**15.00**	
Cumulative Total				**GPA: 3.700**		**12.00**	**15.00**	
Winter 2022			**(January 12, 2022 To May 05, 2022)**					
LAW	530	001	Criminal Law	Barbara Mcquade	4.00	4.00	4.00	A-
LAW	540	002	Introduction to Constitutional Law	Evan Caminker	4.00	4.00	4.00	A
LAW	594	001	Legal Practice Skills II	Howard Bromberg	2.00		2.00	H
LAW	664	001	European Union Law	Thomas Verellen	3.00	3.00	3.00	A+
Term Total				**GPA: 3.972**	**13.00**	**11.00**	**13.00**	
Cumulative Total				**GPA: 3.830**		**23.00**	**28.00**	
Fall 2022			**(August 29, 2022 To December 16, 2022)**					
LAW	536	001	Nat'l Security & Civ Liberties	Barbara Mcquade	3.00	3.00	3.00	B+
LAW	560	001	Property	Thomas Gallanis Jr	4.00	4.00	4.00	A
LAW	678	001	International Finance	Veronica Santarosa	4.00	4.00	4.00	A
LAW	828	001	Social Justice and the Law	Michelle Crockett	2.00	2.00	2.00	A
Term Total				**GPA: 3.838**	**13.00**	**13.00**	**13.00**	
Cumulative Total				**GPA: 3.833**		**36.00**	**41.00**	

Continued next page >

Control No: E196664901 Issue Date: 05/30/2023 Page 2

The University of Michigan Law School
Cumulative Grade Report and Academic Record

Name: Dillon-Davidson,Sophia
Student#: 17796780

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Winter 2023		**(January 11, 2023 To May 04, 2023)**						
LAW	669	002	Evidence	Len Niehoff	4.00	4.00	4.00	A
LAW	776	001	Financ Mkts: Reg, Pol'y &Trans	Veronica Santarosa	4.00	4.00	4.00	A
LAW	797	001	Model Rules and Beyond	Bob Hirshon	3.00	3.00	3.00	A
LAW	861	001	Law and Economics Workshop	JJ Prescott	2.00	2.00	2.00	A
LAW	885	005	Mini-Seminar	Steven Schaus	1.00		1.00	S
			Short Stories / Life in (the Shadow of) the Law					
Term Total				**GPA: 4.000**	**14.00**	**13.00**	**14.00**	
Cumulative Total				**GPA: 3.877**		**49.00**	**55.00**	
Fall 2023		**(August 28, 2023 To December 15, 2023)**						
Elections as of:		05/30/2023						
LAW	644	001	Intro to Inc Tax of Business	Reuven Avi-Yonah	3.00			
LAW	677	001	Federal Courts	Gil Seinfeld	4.00			
LAW	976	001	Michigan Innocence Clinic	David Moran Elizabeth Cole Imran Syed	4.00			
LAW	977	001	Michigan Innocence Clinic Sem	David Moran Elizabeth Cole Imran Syed	3.00			

End of Transcript
Total Number of Pages 2

University of Michigan Law School
Grading System

Honor Points or Definitions

Through Winter Term 1993		Beginning Summer Term 1993	
A+	4.5	A+	4.3
A	4.0	A	4.0
B+	3.5	A-	3.7
B	3.0	B+	3.3
C+	2.5	B	3.0
C	2.0	B-	2.7
D+	1.5	C+	2.3
D	1.0	C	2.0
E	0	C-	1.7
		D+	1.3
		D	1.0
		E	0

Other Grades:

F Fail.

H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.

I Incomplete.

P Pass when student has elected the limited grade option.*

PS Pass.

S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)

T Mandatory pass when student is transferring to U of M Law School.

W Withdrew from course.

Y Final grade has not been assigned.

* A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

Third Party Recipients

As a third party recipient of this transcript, you, your agents or employees are obligated by the Family Rights and Privacy Act of 1974 not to release this information to any other third party without the written consent of the student named on this Cumulative Grade Report and Academic Record.

Official Copies

An official copy of a student's University of Michigan Law School Cumulative Grade Report and Academic Record is printed on a special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required. A black and white is not an original. Any alteration or modification of this record or any copy thereof may constitute a felony and/or lead to student disciplinary sanctions.

The work reported on the reverse side of this transcript reflects work undertaken for credit as a University of Michigan law student. If the student attended other schools or colleges at the University of Michigan, a separate transcript may be requested from the University of Michigan, Office of the Registrar, Ann Arbor, Michigan 48109-1382.

Any questions concerning this transcript should be addressed to:

Office of Student Records
University of Michigan Law School
625 South State Street
Ann Arbor, Michigan 48109-1215
(734) 763-6499

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend, very enthusiastically, Sophia Dillon-Davidson for a clerkship in your chambers. I came to know Sophia very well last summer (2022) when I hired her as a full-time student-attorney in the Michigan Innocence Clinic, a non-DNA innocence project I direct at the University of Michigan Law School. Since we have only six students working in the Clinic over the summer, I get to know each of them very well, and I had the chance to review a great deal of Sophia's work.

Of the roughly 60 summer interns we've had in the Clinic over the past decade, Sophia was certainly one of the ten best. She wrote numerous memos, and I found her research and writing to be clear and concise.

In particular, Sophia wrote the first draft of a reply brief we filed in an extremely high profile post-conviction case involving claims of new scientific developments discrediting the forensic evidence the State presented at trial. Sophia's draft was so good that we had to edit it only minimally before filing. Sophia also spent a good deal of time meeting with and advising the client in that case. The client really came to trust Sophia over the course of the summer. I would characterize Sophia's work on that case, and others, as superb.

Sophia is a very friendly and thoughtful person, and her peers in the Clinic found her to be a pleasure to work with. So did I.

I should add that Sophia's performance last summer is no aberration. Her current grade point average indicates that she is well on her way to graduate with high honors, and she is a senior editor at the Michigan Law Review. She is, in short, an excellent student.

In sum, I believe Sophia would make an excellent clerk for any judge fortunate enough to hire her. Please do not hesitate to contact me, as I would be happy to answer any questions you may have.

Sincerely,

David A. Moran

David Moran - morand@umich.edu - 734-615-5419

UNIVERSITY OF MICHIGAN LAW SCHOOL
625 South State Street
Ann Arbor, Michigan 48109

VERONICA AOKI SANTAROSA
Professor of Law

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am very pleased to supply a reference for Sophia Dillon-Davidson in connection with her application for a judicial clerkship in your chambers. Sophia is an extraordinary student and a stellar candidate to a top clerkship, and I am pleased to give her my highest recommendation.

I got to know Sophia when she was a student in my International Finance class during the fall of 2022 and in my Financial Regulation class this term. Among two very strong groups of students, she was a stand-out in every respect: analytically powerful, a clear writer, someone with a speculative turn of mind and with real intellectual initiative. Sophia is probably among the top 10 students I have taught in my 12 years at Michigan.

In both courses, Sophia excelled in class participation, in the final exam, and in the course project. During the course, we addressed a number of complex legal and economic matters and Sophia's contributions to class discussions were always substantial. She had a solid grasp of the market practices and the regulatory constraints, combined with an unusually sophisticated ability to weave statutory and case law interpretation with policy-oriented perspectives. Even though she had a quiet presence in the classroom and spoke mostly only when called on, when she spoke her classmates listened – they did so because her comments were thoughtful and challenged the conventional thinking. If I had a complex question, I knew I could always count on Sophia for an intelligent and insightful answer.

In my encounters with her outside of class, I have also found her to be intellectually curious, well read, and professional. I can attest that her understanding of financial regulation went well beyond the class' demands. However, what really distinguished her from many of her peers was her willingness to try on unorthodox ideas and at the same time take on extra responsibilities, not just to push or test herself, but to make sure she gets it right. Every time she found something that she did not know or did not understand, she immediately went to work—reading, researching, and immersing herself in the problem until she had mastered it.

Her written work for both courses displayed all of these qualities and was second only to that of a student who had spent multiple years in Wall Street before starting law school. The clarity, logic and rigor of her legal analysis in the exam, which was written under intense time pressure, was simply outstanding. Sophia writes with a verve, precision, and an intellectual curiosity that I think would be an asset to any judicial chambers.

For the course project, Sophia explored the challenges and opportunities of cryptocurrencies and governments' regulatory responses, which she presented in class. I was impressed by how quickly she immersed herself in and mastered the technical intricacies of this innovation, as well as how nimbly she drew analogies to existing legal categories in an effort to fit crypto into the regulatory perimeter. She conveyed her ideas clearly and grappled with abstract legal and economic concepts, identifying possible gaps in the current regulatory framework, and she was able to respond effectively to counter-arguments to her position. While Sophia required little direction and essentially worked independently, she sought advice when appropriate and took feedback willingly. It was a delight to support her in honing her research skills and extremely gratifying to listen to her thoroughly researched and persuasive final presentation.

Sophia is a strong and careful thinker, a clear writer, and a dedicated person. I regard her as a credit to Michigan. I am fully confident that she will be an excellent lawyer and a first-rate judicial clerk. Her enthusiasm, intelligence, and strong work ethic, combined with a pleasant sense of humor, makes her a great person to have around the office. If I could possibly answer any questions or add anything else, I would be delighted to do so.

Sincerely,

Veronica Aoki Santarosa
Professor of Law

(734) 764-7335
aokisan@umich.edu

Veronica Santarosa - aokisan@umich.edu - 734-764-7335

UNIVERSITY OF MICHIGAN LAW
Legal Practice Program
801 Monroe Street, 945 Legal Research
Ann Arbor, Michigan 48109-1210

Howard Bromberg
Clinical Professor of Law

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I recommend Sophia Dillon-Davidson for a judicial clerkship with your office. Sophia was a student in my Legal Practice course at the University of Michigan Law School in the 2021-22 academic year. Legal Practice is a year-long course which teaches first year law students the basics of legal research and writing. As part of the course, students write two memorandums, a motion, and an appellate brief on various legal issues.

As a student, Sophia impressed me with her academic abilities. She was one of the best I taught in the 2021-22 academic year. She is an excellent writer and received high marks on her memoranda and briefs. As a result, she earned one of the few Honors grades that I give out. She particularly impressed me with her final appellate brief, which was perhaps the best in the class.

For these reasons I invited her to be a research assistant on several of my research projects. She did excellent work as my research assistant. Her work was always meticulous, conscientious, and well-conceived.

Sophia is a dedicated, personable law student. She is a senior editor of the Michigan Law Review. She is also a talented cello player.

I recommend her extremely highly for a clerkship with your chambers.

Sincerely,

/Howard Bromberg/

Howard Bromberg
Clinical Professor of Law

Howard Bromberg - hbromber@umich.edu - 734-764-5564

Sophia Dillon-Davidson

67 S. Mt. Holyoke Dr., Amherst, Massachusetts 01002
(413) 835-1516 • sdillond@umich.edu

Writing Sample

I prepared this reply brief during the summer of 2022 while working as a student attorney at the Michigan Innocence Clinic. I have permission to use this as a writing sample. This draft reflects light editing from my supervisor.

INTRODUCTION

The prosecution's response brief reflects a misunderstanding of several key points from Ms. Boes's Motion for Relief from Judgment. This reply will address a few of these points below, but the main issue before the Court at this stage is simple: Ms. Boes has made a sufficient showing to obtain an evidentiary hearing. As explained below and in Ms. Boes's 6.500 motion, there have been advances in the fields of fire science and false confessions that constitute new evidence. Further, the fact that the prosecution's lead fire expert at trial has subsequently been discredited for shading his testimony to favor the prosecution is unquestionably new evidence. Therefore, this Court should convene an evidentiary hearing to build a record on the claims presented.

I. The Prosecution's Experts Used Negative Corpus and Negative Corpus Remains Disavowed in *NFPA 921*.

As discussed in Ms. Boes's 6.500 motion and in Mr. Lentini's report (App. A to 6.500 Mot.), there have been significant changes in fire science since Ms. Boes's trial in 2003 and her first 6.500 motion in 2006. At Ms. Boes's trial the prosecution's experts, John DeHaan and Michael Marquardt, relied on the use of negative corpus to conclude that the fire must have started in the hallway. Lentini Report at 10-16. It was not until the 2011 version of *NFPA 921* that the fire science community unequivocally rejected negative corpus. App. D to 6.500 Mot.; *see also* Lentini Report at 8–10 (discussing the changes to *NFPA 921*). This rejection remains in the 2021 version of *NFPA 921*. *NFPA 921* §19.6.5 (2021).

The prosecution claims that the current version of *NFPA 921* (issued in 2021) allows for negative corpus (Prosecution Resp. at 23), but the prosecution *just used ellipses to edit out language disavowing negative corpus.* The 2021 version of *NFPA 921* actually states:

> **The negative corpus process is not consistent with the scientific method, is inappropriate, and should not be used because it generates untestable hypotheses and may result in incorrect determinations of the ignition source and first fuel ignited.**

> Any hypotheses formulated for the causal factors (e.g., first fuel, ignition source, and ignition sequence) must be based on the analysis of facts and logical inferences that flow from those facts." §19.6.5 (emphasis added).

There is no question, then, that negative corpus remains firmly rejected by the fire science community. This scientific change occurred in 2011 after both Ms. Boes's trial and first 6.500 motion, and it now undermines the prosecution experts' ultimate conclusions in this case.

The prosecution further contends that their experts did not use negative corpus to deduce that the fire must have been ignited in the hallway using an accelerant, despite the lack of any actual evidence to support that theory that does not rely on the use of negative corpus. Prosecution Resp. at 24-27. As discussed in detail in Mr. Lentini's report, both DeHaan and Marquardt did indeed use negative corpus to reach this conclusion. DeHaan testified at trial that the intense fire damage in the east end of the hallway led him to look for "a fuel source that would drive a big enough fire to accomplish that damage." Trial Tr. vol. 7 at 1133–34. He further testified that he was unable to find any evidence of such a fuel source and "the only thing [he] could identify that would create that kind of intense fire at that location would be a flammable liquid that ends up getting burned away substantially during the fire." *Id.* at 1134.

But no liquid accelerant was detected in chemical testing performed on samples taken from the hallway, even though there was liquid accelerant detected in the bedroom. *Id*. at 1151. So DeHaan concluded: "**All the other options have been explored and eliminated, and the only thing I am left with is the presence of a flammable liquid at the east end of the hallway**." *Id.* at 1151–52 (emphasis added). DeHaan's conclusion that there must have been flammable liquid in the hallway, despite no actual evidence of its presence, is a classic example of negative corpus. Lentini Report at 11. Marquardt used a similar line of reasoning and testified that he believed that "there [wa]s not sufficient fuel load to cause" the amount of burn damage that was present in the hallway, and therefore that "an ignitable liquid had to be added to that area." Trial Tr. vol. 4 at 713. Again, that is a perfect example of negative corpus reasoning.

The prosecution attempts to show that Marquardt did not rely on negative corpus by detailing all the steps he took to reach his conclusion. Prosecution Resp. at 24-26. However, all of the steps listed serve only to prove that he did in fact rely on negative corpus. The prosecution is unable to point to a single piece of evidence that affirmatively supports Marquardt's theory that the fire started in the hall. *Id.* Rather, Marquardt's investigation only yielded **a lack of evidence**. He relied entirely on his **inability** to find an ignition source in the bedroom to conclude that the fire must have started in the hallway.

When Marquardt presented this theory at Ms. Boes's trial in 2003, it was acceptable to opine that because he was unable to find a source of ignition in one area, the fire must have originated in a different area where he **also could not find any source of ignition**. But that kind of reasoning has not been acceptable since 2011, and it is not acceptable now. An evidentiary hearing is necessary to further clarify that the prosecution's experts relied on a now discredited methodology when concluding that the fire started in the hallway.

Ms. Boes does not contest that the process of elimination is an integral part of the scientific method, and its use is valid in some situations. This, however, is not one of those situations. In order to properly use the process of elimination, there must first be a testable hypothesis. Lentini Report at 8-9. Because it is impossible to test the prosecution's theory that no liquid accelerant was found in the hallway because it burned away, DeHaan's and Marquardt's reasoning is now invalid. *Id.*

Further, since 2008 the NFPA has required that evidence must be *uniquely* consistent with a specific origin. Lentini Report at 12. If the origin of the fire is not correctly identified, any subsequent cause determination will also be incorrect. *NFPA 921* §18.1 (2021). It is therefore especially concerning when, as is the case here, investigators utilize negative corpus when there is no origin that is uniquely consistent with the evidence. Even if the evidence were consistent with the fire starting in the hallway, it is also entirely consistent with the fire starting in the bedroom, a fact acknowledged by Marquardt. Trial Tr. vol. 4 at 630. This is the exact type of situation that would be most concerning to the fire science community, not as the prosecution contends, the type of situation that would lend itself to an acceptable use of process of elimination. An evidentiary hearing is necessary to further detail why the process of elimination is not valid in this case.

II. DeHaan and Marquardt Did Not Properly Account for Ventilation When They Concluded That the Fire Started in the Hallway.

The prosecution experts at trial relied on the lowest and deepest char to determine the origin of the fire, a practice that was not known to produce inaccurate results in 2003 or in 2006. Since 2006, the use of the lowest and deepest char as a conclusory method to determine a fire's origin has been invalidated. Lentini Report at 4. Although the effects of ventilation on fire have been studied for many years, it was not until the Carman paper was published in 2008 that the fire science community began to understand that ventilation-generated patterns could mislead fire investigators and result in an incorrect origin determination. Ex. A. After Carman's paper was published in 2008, it became accepted in the fire science community that using the lowest and deepest char to determine the origin is an unreliable method of fire investigation because it fails to account for ventilation at the location of the fire. Lentini Report at 4–6.

The prosecution argues that neither Marquardt nor DeHaan relied on the deepest and lowest char method to determine the fire's origin. Prosecution Resp. at 28-30. This is incorrect. Both Marquardt and DeHaan erroneously used this methodology to determine that the fire originated in the hallway. Lentini Report at 14-16. Marquardt and DeHaan relied on the intense burn patterns on the bedroom door and adjacent surfaces to conclude that the fire must have started outside the bedroom in the hallway. *Id*. Changes in fire science now prove that such a conclusion is unreliable. *Id.* at 7.

While fire pattern analysis remains an accepted part of fire investigations, the accepted interpretation of fire patterns has shifted significantly since 2006. *Id.* at 4. It is not enough that a fire investigator considers if a fire had sufficient oxygen, they must also know that fully involved fires will often only persist at the sources of ventilation, causing deep chars that can be mistaken for the origin. The prosecution's experts did not account for this when concluding that the fire must have started in the hallway on the basis of the significant fire damage they observed there. *Id.* at 14-16. Although both of the prosecution's experts mentioned ventilation in their testimony, it was not in the context of how ventilation would impact the fire patterns in the result of a flashover. Trial Tr. vol. 4 at 87, 180-81; DeHaan Report at 11. Rather, both experts explained how the ventilation conditions as they believed them to be could create a fire that was entirely consistent with the evidence, which, as discussed above, is no longer sufficient. An evidentiary hearing would allow Ms. Boes to present additional evidence explaining that the ventilation considerations that the prosecution mentions are not the same considerations that have driven a change in fire science since 2006.

That Marquardt was a trainer in an exercise in 2005 does not mean that he was aware that ventilation-generated patterns could mislead fire investigators when he testified in 2003. The prosecution offers no evidence that Marquardt was aware of the pitfalls of relying on the lowest and deepest char to determine the origin of the fire at the time of Ms. Boes's trial. Further, while Marquardt participated in the study as a trainer, he was not a co-author of Carman's paper. Steven Carman, *Improving the Understanding of Post-Flashover Fire Behavior*, INT'L SYMP. ON FIRE

INVESTIGATIONS SCI. AND TECH. (2008). It was not until Carman's study was published in 2008 that it became clear that post-flashover ventilation could result in misleading patterns. Marquardt's participation as a trainer is not indicative of any understanding of *why* only 5.7% of "the most experienced fire investigators" could accurately determine the origin of the fire, only that he may have known this was an area in which fire investigators were seriously lacking. *Id*.

Once again, an evidentiary hearing is necessary so that the experts can explain how the fire science has changed since 2006 and how those changes impact this case.

III. DeHaan's Discreditation Creates a Reasonable Possibility of a Different Outcome.

The prosecution cannot deny that John DeHaan has been discredited for shading his testimony to favor the prosecution in another case very near in time to his involvement in Ms. Boes's case. That discreditation, standing alone, requires a new trial. Contrary to the statements of the prosecution, Ms. Boes does not have to show that the absence of DeHaan's testimony would have been "fatal" to the prosecution's case. Prosecution Resp. at 35. She merely needs to show that there is a reasonable probability of a different outcome at retrial. *People v. Cress*, 468 Mich. 678, 692 (2003). At trial, the prosecution heavily relied on DeHaan's testimony and credentials to secure a guilty verdict. His discreditation therefore creates a reasonable possibility of a different outcome at retrial.

As discussed in Ms. Boes's 6.500 motion, the AAFS recommended that DeHaan be expelled from the AAFS after finding that DeHaan had committed professional misconduct. This misconduct included "[DeHaan's] misleading testimony in the *Gutweiler* case and his failure to later correct his testimony, **his subservience to the wishes of the prosecutors regarding the contents of his reports, and his conclusions in one of his reports that were not based on sound science.**" 6.500 Mot. at 1 (emphasis added). The AAFS Committee's finding that DeHaan subordinated his own judgment to that of the prosecutor destroys his reliability. On retrial, defense counsel would have a compelling basis for cross-examining DeHaan about how his relationships with prosecutors affect his conclusions in a case.

Although the prosecution now tries to downplay DeHaan's role in Ms. Boes's conviction, it relied heavily at trial on Dehaan's testimony and frequently stressed his seemingly impressive credentials, including his position as a fellow for the AAFS. Trial Tr. vol. 7 at 1107. Further, when the prosecution presented DeHaan's conclusion that the fire started in the hallway, they stated that DeHaan is "the guy who wrote the book" when it comes to fire investigation. *Id*. at 2177.

The prosecution cites "strong" supporting evidence of Ms. Boes's guilt for why it believes there is not a reasonable probability of a different outcome. Prosecution Resp. at 36. But the prosecution neglects to acknowledge that much of this evidence was only considered "strong" at trial because it was supported by the testimony of a distinguished expert in the field ("the guy who wrote the book"). DeHaan's discreditation significantly damages the strength of the prosecution's other evidence, including Marquardt's testimony. Despite the prosecution's insistence otherwise, one expert *is* less credible than two, especially when "the guy who wrote the book" is no longer one of the two. With only Marquardt's testimony, the jury would be left to compare the credibility of Marquardt and the defense expert at Ms. Boes' original trial. It is a much tighter call when the prosecution is left with only the testimony of a mid-level ATF agent who at the time was seemingly much less impressive than DeHaan. Further, as discussed above and below, the evidence which is not weakened by DeHaan's discreditation has been discredited by the changes in fire science and the science of false confessions since 2006.

IV. There Have Been Developments in False Confession Research that Call into Question the Reliability of Ms. Boes's "Confession."

Dr. DeLisi is completely unqualified to testify to the changes in the science of false confessions. His testimony would not be admissible at trial and should not be seriously considered. Dr. DeLisi has not published a single article on the topic of false confessions, nor has he ever provided any testimony on the subject. Prosecution Ex. T. Not even the prosecution claims that Dr. DeLisi is an expert in false confessions. Rather, they assert that he is qualified to opine on the changes in the science of false confessions, the risks of interrogations, and the REID technique because he "follows" the research despite having done no research of his own. Prosecution Resp. at 39. Dr. DeLisi's assertions in his report are frequently incorrect and misrepresent the findings of research, an unsurprising result of opining on a topic on which he is not an expert.

Dr. DeLisi misrepresents the findings of studies and Ms. Boes's behavior on multiple occasions. For example, Dr. Delisi asserts that Ms. Boes used neutralization during her interrogation and displayed behavioral signs of an increased cognitive load consistent with deception. DeLisi Report at 18. However, he does not mention that there is another cause of increased cognitive load: internalized confessions. G.H. Gudjohnsson et al, *The Role of Memory Distrust in Cases of Internalized False Confession*, 28 APPLIED COGNITIVE PSYCHOLOGY 340 (2014). Ms. Boes's behavior is consistent with that of an innocent person being fed misleading information. Further, Dr. DeLisi claims that recent research undermines the claim that an accusatory environment can contribute to false confessions. DeLisi Report at 25. However, the study he cites actually concludes that accusatorial interrogations may not be worth it given the "well documented risk of false confessions associated with common accusatory interrogation techniques." Haley Cleary & Ray Bull, *Contextual Factors Predict Self-Reported Confession*

Decision-Making: A Field Study of Suspects' Actual Police Interrogation Experiences, LAW & HUM. BEHAV. 320 (2021).

The prosecution claims that Ms. Boes lacks the vulnerability traits required for an internalized false confession. This alone is false, but it also misstates false confession research. While traits may make a subject more vulnerable to giving a false confession, **this does not exclude the possibility of false confessions absent any vulnerabilities.** Gudjohnsson, *supra* at 340. However, as explained in Ms. Boes's 6.500 motion and Mr. Trainum's report, Ms. Boes did indeed exhibit signs of memory distrust, suggestibility, trust of police, and trying to please investigators. Her statements are entirely consistent with an internalized false confession. Further, memory distrust does not require that Ms. Boes distrust every detail from that morning, nor is it surprising that Ms. Boes did not question her memory immediately. Incorporating details from external sources into personal recollection is a known potential trigger for memory distrust. *Id.* at 337.

There have been significant developments in the science of false confessions since 2006. As discussed in Mr. Trainum's report, there was no consensus in the field of false confession research in 2006. However, the research on interrogation practices and false confessions conducted since 2006 has led to a greater understanding of how certain interrogation tactics can result in false confessions and has resulted in a shift in the legal and scientific consensus. Trainum Report at 1-2. For example, research published in 2007 demonstrates how police interrogation practices used against Ms. Boes can lead to internalized false confessions. *See* Trainum Report at 3, 127–31. Additionally, in 2010 the American Psychological Association's AP-LS published a Scientific Review paper discussing the consensus view of its members regarding the risk factors that can lead to false confessions, including lengthy interrogations, presentations of false evidence, and implied promises of leniency – all of which are present in this case. These studies and newfound consensus have led to significant changes in how law enforcement and courts treat false confessions. Since the APA came to a consensus in 2010 the Reid Institute removed the sentence that questioned the validity of cases involving claims of false confessions and in 2011 the United States Supreme Court recognized that, a "**frighteningly high percentage of people [can be induced to] confess to crimes they never committed**." *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011) (emphasis added; quotation marks and citation omitted). An evidentiary hearing is necessary so that experts can explain how false confession science has changed since 2006.

Mr. Trainum's conclusions are based on scientifically valid and peer reviewed studies. The prosecution claims that some of the research cited by Mr. Trainum is not ecologically valid and therefore should not be considered. Ms. Boes does not contend that these studies perfectly mirror the conditions of the interrogation of a murder suspect. Any study that did match these conditions would unethical. Gudjohnsson, *supra* at 338. However, this does not mean that these studies are invalid. Actual false confession experts agree that although there are limitations, "laboratory studies into false confessions greatly assist with understanding the conditions under which memory distrust is elicited." *Id.* As Dr. DeLisi himself argues, it is sometimes appropriate to draw conclusions about human behavior in high stakes situations from studies conducted in low stakes environments. DeLisi Report at 17-18.

The prosecution acknowledges that there is ecologically valid post-2006 research on factors that lead to contamination that can result in false confessions during the interrogation process. *Id.* at 11. However, they argue that this is not relevant because there is no evidence of contamination in this case. This is false. There is clear evidence that contamination and confirmation bias influenced Ms. Boes's statements and the interpretation of her statements. Trainum Report at 119. Investigators contaminated Ms. Boes's "confession" by supplying her with details about the crime to include in her confession such as that Ms. Boes saw the gasoline can in Robin's room, spread the gasoline around the room, and lit the candle which she then incorporated into her statements. *Id.*

An evidentiary hearing is necessary to further clarify that Ms. Boes's behavior and statements are consistent with an internalized false confession and that, in fact, the shifts in scientific understanding since 2006 constitute new evidence within the meaning of MCR 6.502(G).

Applicant Details

First Name	**Kelsey**
Last Name	**Dion**
Citizenship Status	**U. S. Citizen**
Email Address	**kelseydion@law.gwu.edu**
Address	**Address** Street **1444 Rhode Island Avenue NW** City **Washington** State/Territory **District of Columbia** Zip **20005** Country **United States**
Contact Phone Number	**9788088947**

Applicant Education

BA/BS From	**Tufts University**
Date of BA/BS	**May 2019**
JD/LLB From	**The George Washington University Law School** **https://www.law.gwu.edu/**
Date of JD/LLB	**May 15, 2024**
Class Rank	**15%**
Law Review/Journal	**Yes**
Journal(s)	**The George Washington Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**George Washington Moot Court Board**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Kettler, Cheryl
ckettler@law.gwu.edu
202-994-0976
Durrer, Dale
durrer@law.gwu.edu
Berman, Paul
pberman@law.gwu.edu
202-569-6837

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Kelsey M. Dion
1444 Rhode Island Avenue NW, Washington, DC 20005 · (978) 808-8947 · kelseydion@law.gwu.edu

June 21, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
600 Granby Street,
Norfolk, VA 23510

Dear Judge Walker,

I am third-year student at the George Washington University Law School and an Articles Editor of *The George Washington Law Review*. I write to apply for a 2024–2025 clerkship in your chambers.

Enclosed, please find my resume, law school transcript and a writing sample. Professor Paul Schiff Berman, Professor Cheryl Kettler and the Honorable Dale Durrer will provide letters of recommendation in support of my application. I am happy to provide additional references upon request.

I welcome the opportunity to discuss my qualifications further. Thank you for your consideration.

Sincerely,

Kelsey Dion

Kelsey Dion

Kelsey M. Dion

1444 Rhode Island Avenue NW, Washington, DC 20005 · (978) 808-8947 · kelseydion@law.gwu.edu

EDUCATION

The George Washington University Law School, Washington, DC
J.D., expected May 2024

- George Washington Scholar (top 15% of class, as of Spring 2023)
- Activities: Articles Editor for *The George Washington Law Review*, Moot Court Board, Civil Procedure Teaching Assistant, Research Assistant to Professor Paul Schiff Berman
- Upcoming: Dean's Fellow (Fall 2023–Spring 2024)

Tufts University, Medford, MA
B.A., in International Relations & Spanish, with a minor in History, *cum laude,* May 2019

- Activities: Varsity Softball Team, three-time recipient of NESCAC All-Academic Honors
  Founding Member of Tufts University Chapter of the College Diabetes Network
- Study Abroad: Madrid, Spain

EXPERIENCE

Skadden, Arps, Slate, Meagher & Flom, Washington, DC
Summer Associate, May 2023–July 2023

- Worked closely with associates and partners in the litigation group
- Performed research and drafted memorandum on a variety of substantive legal questions, ranging from civil litigation to congressional and white collar investigations

United States District Court for the District of Columbia, Washington, DC
Judicial Intern for Judge Randolph D. Moss, Fall 2022

- Conducted research and drafted opinions on issue arising from civil and criminal cases pending before the District Court
- Revised citations in draft opinions to comply with Bluebook formatting

Campaign for the Fair Sentencing of Youth, Washington, DC
Legal Intern, Summer 2022

- Researched juvenile sentencing precedent to write legal memorandum identifying priority states for future legislative sessions
- Evaluated state-level legislation and researched potential challenges to the implementation of new policies

Cleary Gottlieb Steen & Hamilton, New York, NY
Corporate Paralegal, July 2019–August 2021

- Assisted with due diligence, drafting, and translating of documents to prepare filings for the SEC
- Organized review of internal client data and country-specific financial research for offering documents
- Liaised between attorneys, clients, government agencies and opposing counsel to assist with successful closings for the firm's international capital markets and sovereign debt practice groups

Pro Bono Work

- Organized Legal Outreach negotiation workshop for 20 low-income and first-generation high school students
- Communicated with Tanzanian counsel to discuss case strategy and coordinate resources as paralegal support for Cleary's Anti-Death Penalty project
- Coordinated prison visits, compiled court filings, and organized client research as paralegal support for Cleary's Domestic Violence Survivors Justice Act initiative

COMMUNITY INVOLVEMENT

The Brave House, Brooklyn, NY, *Youth Advocate,* January 2020-August 2021

INTERESTS

Spanish Language and Literature, Running, Volunteer Youth Softball Coach

THE GEORGE WASHINGTON UNIVERSITY
WASHINGTON, DC

OFFICE OF THE REGISTRAR

GWid : G33055419
Date of Birth: 18-MAR

Date Issued: 05-JUN-2023

Record of: Kelsey M Dion

Page: 1

Student Level: Law
Admit Term: Fall 2021

Issued To: KELSEY DION
KELSEYDION@GWU.EDU

REFNUM:5607269

Current College(s):Law School
Current Major(s): Law

SUBJ NO	COURSE TITLE	CRDT	GRD PTS
GEORGE WASHINGTON UNIVERSITY CREDIT:			
Fall 2021			
Law School			
Law			
LAW 6202	Contracts Swaine	4.00	A-
LAW 6206	Torts Turley	4.00	A-
LAW 6212	Civil Procedure Berman	4.00	A
LAW 6216	Fundamentals Of Lawyering I Kettler	3.00	A
Ehrs 15.00 GPA-Hrs 15.00 GPA 3.822			
CUM 15.00 GPA-Hrs 15.00 GPA 3.822			
GEORGE WASHINGTON SCHOLAR			
TOP 1%-15% OF THE CLASS TO DATE			
Spring 2022			
Law School			
Law			
LAW 6208	Property Kieff	4.00	A
LAW 6209	Legislation And Regulation Schwartz	3.00	B+
LAW 6210	Criminal Law Weisburd	3.00	A-
LAW 6214	Constitutional Law I Cheh	3.00	B+
LAW 6217	Fundamentals Of Lawyering II Kettler	3.00	A
Ehrs 16.00 GPA-Hrs 16.00 GPA 3.687			
CUM 31.00 GPA-Hrs 31.00 GPA 3.753			
Good Standing			
DEAN'S RECOGNITION FOR PROFESSIONAL DEVELOPMENT			
GEORGE WASHINGTON SCHOLAR			
TOP 1%-15% OF THE CLASS TO DATE			

************ CONTINUED ON NEXT COLUMN ***************

SUBJ NO	COURSE TITLE	CRDT	GRD PTS
Fall 2022			
Law School			
Law			
LAW 6230	Evidence Durrer	3.00	A
LAW 6520	International Law Steinhardt	4.00	A-
LAW 6668	Field Placement Mccoy	3.00	CR
LAW 6669	Judicial Lawyering Canan	2.00	B+
Ehrs 12.00 GPA-Hrs 9.00 GPA 3.704			
CUM 43.00 GPA-Hrs 40.00 GPA 3.742			
Good Standing			
GEORGE WASHINGTON SCHOLAR			
TOP 1% - 15% OF THE CLASS TO DATE			
Spring 2023			
LAW 6360	Criminal Procedure	4.00	B+
LAW 6380	Constitutional Law II	4.00	A-
LAW 6400	Administrative Law	3.00	A-
LAW 6554	International Criminal Law	2.00	CR
Ehrs 13.00 GPA-Hrs 11.00 GPA 3.545			
CUM 56.00 GPA-Hrs 51.00 GPA 3.699			
Good Standing			
GEORGE WASHINGTON SCHOLAR			
TOP 1% - 15% OF THE CLASS TO DATE			
Fall 2022			
Law School			
Law			
LAW 6657	Law Review Note	1.00	----------
	Credits In Progress:	1.00	
Spring 2023			
LAW 6657	Law Review Note	1.00	----------
	Credits In Progress:	1.00	
Fall 2023			
LAW 6218	Prof Responsibility & Ethics	2.00	----------
LAW 6232	Federal Courts	3.00	----------
LAW 6250	Corporations	4.00	----------
LAW 6644	Moot Court - Van Vleck	1.00	----------
LAW 6658	Law Review	1.00	----------
	Credits In Progress:	11.00	

*************** CONTINUED ON PAGE 2 *****************

Katie Cloud
Interim University Registrar

This transcript processed and delivered by Parchment

THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

GWid : G33055419
Date of Birth: 18-MAR

Date Issued: 05-JUN-2023

Record of: Kelsey M Dion

Page: 2

SUBJ NO COURSE TITLE CRDT GRD PTS

***************** TRANSCRIPT TOTALS *****************

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	56.00	51.00	188.67	3.699
OVERALL	56.00	51.00	188.67	3.699

################## END OF DOCUMENT ##################

Katie Cloud
Interim University Registrar

Office of the Registrar
THE GEORGE WASHINGTON UNIVERSITY
Washington, DC 20052

NOTICE TO RECIPIENT

Federal legislation (the Family Educational Rights and Privacy Act) requires institutions of higher education to inform each recipient of this academic record that it is to be used only for the purpose for which it was presented and that it is not to be copied or made available to a third party without the express permission of the individual concerned. It must be pointed out in this context that as a general practice, mutually agreed upon by professional associations, such records are not to be reproduced for distribution beyond the purview of the recipient or his/her organization.

DESIGNATION OF CREDIT

All courses are taught in semester hours.

TRANSFER CREDIT

Transfer courses listed on your transcript are bonafide courses and are assigned as advanced standing. However, whether or not these courses fulfill degree requirements is determined by individual school criteria. The notation of TR indicates credit accepted from a postsecondary institution or awarded by AP/IB exam.

EXPLANATION OF COURSE NUMBERING SYSTEM
All colleges and schools beginning Fall 2010 semester:

1000 to 1999	Primarily introductory undergraduate courses.
2000 to 4999	Advanced undergraduate courses that can also be taken for graduate credit with permission and additional work.
5000 to 5999	Special courses or part of special programs available to all students as part of ongoing curriculum innovation.
6000 to 6999	For master's, doctoral, and professional-level students; open to advanced undergraduate students with approval of the instructors and the dean or advising office.
8000 to 8999	For master's, doctoral, and professional-level students.

All colleges and schools except the Law School, the School of Medicine and Health Sciences, and the School of Public Health and Health Services before Fall 2010 semester:

001 to 100	Designed for freshman and sophomore students. Open to juniors and seniors with approval. Used by graduate students to make up undergraduate prerequisites. Not for graduate credit.
101 to 200	Designed for junior and senior students. With appropriate approval, specified courses may be taken for graduate credit by completing additional work.
201 to 300	Primarily for graduate students. Open to qualified seniors with approval of instructor and department chair. In School of Business, open only to seniors with a GPA of 3.00 or better as well as approval of department chair and dean.
301 to 400	Graduate School of Education and Human Development, School of Engineering and Applied Science, and Elliott School of International Affairs – Designed primarily for graduate students. Columbian College of Arts and Sciences – Limited to graduate students, primarily for doctoral students. School of Business – Limited to doctoral students.
700s	The 700 series is an ongoing program of curriculum innovation. The series includes courses taught by distinguished University Professors.
801	This number designates Dean's Seminar courses.

The Law School
Before June 1, 1968:

100 to 200	Required courses for first-year students.
201 to 300	Required and elective courses for Bachelor of Laws or Juris Doctor curriculum. Open to master's candidates with approval.
301 to 400	Advanced courses. Primarily for master's candidates. Open to LL.B or J.D. candidates with approval.

After June 1, 1968 through Summer 2010 semester:

201 to 299	Required courses for J.D. candidates.
300 to 499	Designed for second- and third-year J.D. candidates. Open to master's candidates only with special permission.
500 to 850	Designed for advanced law degree students. Open to J.D. candidates only with special permission.

School of Medicine and Health Sciences and
School of Public Health and Health Services before Fall 2010 semester:

001 to 200	Designed for students in undergraduate programs.
201 to 800	Designed for M.D., health sciences, public health, health services, exercise science and other graduate degree candidates in the basic sciences.

CORCORAN COLLEGE OF ART + DESIGN

The George Washington University merged with the Corcoran College of Art + Design, effective August 21, 2014. For the pre-merger Corcoran transcript key, please visit http://go.gwu.edu/corcorantranscriptkey

THE CONSORTIUM OF UNIVERSITIES OF THE WASHINGTON METROPOLITAN AREA

Courses taken through the Consortium are recorded using the visited institutions' department symbol and course number in the first positions of the title field. The visited institution is denoted with one of the following GW abbreviations.

AU	American University	MMU	Marymount University
CORC	Corcoran College of Art & Design	MV	Mount Vernon College
		NVCC	Northern Virginia Community College
CU	Catholic University of America	PGCC	Prince George's Community College
GC	Gallaudet University	SEU	Southeastern University
GU	Georgetown University	TC	Trinity Washington University
GL	Georgetown Law Center	USU	Uniformed Services University of the Health Sciences
GMU	George Mason University		
HU	Howard University	UDC	University of the District of Columbia
MC	Montgomery College	UMD	University of Maryland

GRADING SYSTEMS
Undergraduate Grading System

A, Excellent; *B,* Good; *C,* Satisfactory; *D,* Low Pass; *F,* Fail; *I,* Incomplete; *IPG,* In Progress; *W,* Authorized Withdrawal; *Z,* Unauthorized Withdrawal; *P,* Pass; *NP,* No Pass; *AU,* Audit. When a grade is assigned to a course that was originally assigned a grade of *I,* the *I* is replaced by the final grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.
Effective Fall 2011: The grading symbol RP indicates the class was repeated under Academic Forgiveness.
Effective Fall 2003: The grading symbol R indicates need to repeat course.
Prior to Summer 1992: When a grade is assigned to a course that was originally assigned a grade of *I*, the grade is replaced with *I/* and the grade.
Effective Fall 1987: The following grading symbols were added*: A-, B+, B-, C+, C-, D+, D-.*
Effective Summer 1980: The grading symbols: *P,* Pass, and *NP,* No Pass, replace *CR,* Credit, and *NC,* No Credit.

Graduate Grading System

(Excludes Law and M.D. programs.) *A,* Excellent; *B,* Good; *C,* Minimum Pass; *F,* Failure; *I,* Incomplete; *IPG,* In Progress; *CR,* Credit; *W,* Authorized Withdrawal; *Z,* Unauthorized Withdrawal; *AU,* Audit. When a grade is assigned to a course that was originally assigned a grade of *I*, the grade is replaced with *I* and the grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.
Effective Fall 1994: The following grading symbols were added: *A-, B+, B-, C+, C-* grades on the graduate level.

Law Grading System

A+, A, A-, Excellent; *B+, B, B-,* Good; *C+, C, C-,* Passing; *D,* Minimum Pass; *F,* Failure; *CR,* Credit; *NC,* No Credit; *I,* Incomplete. When a grade is assigned to a course that was originally assigned a grade of *I,* the grade is replaced with *I* and the grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.

M.D. Program Grading System

H, Honors; *HP,* High Pass; *P,* Pass; *F,* Failure; *IP,* In Progress; *I,* Incomplete; *CN,* Conditional; *W,* Withdrawal; *X,* Exempt, *CN/P,* Conditional converted to Pass; *CN/F,* Conditional converted to Failure. Through Summer 2014 the *I* was replaced with *I* and the final grade.

For historical information not included in the transcript key, please visit http://www.gwu.edu/transcriptkey

This Academic Transcript from The George Washington University located in Washington, DC is being provided to you by Parchment, Inc. Under provisions of, and subject to, the Family Educational Rights and Privacy Act of 1974, Parchment, Inc. is acting on behalf of The George Washington University in facilitating the delivery of academic transcripts from The George Washington University to other colleges, universities and third parties.

This secure transcript has been delivered electronically by Parchment, Inc. in a Portable Document Format (PDF) file. Please be aware that this layout may be slightly different in look than The George Washington University's printed/mailed copy, however it will contain the identical academic information. Depending on the school and your capabilities, we also can deliver this file as an XML document or an EDI document. Any questions regarding the validity of the information you are receiving should be directed to: Office of the Registrar, The George Washington University, Tel: (202) 994-4900.

The George Washington University Law School
2000 H Street NW
Washington, DC 20052

June 21, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to express my unqualified support of Kelsey M. Dion's application for a judicial clerkship in your chambers. I know Ms. Dion particularly well because she was my student as a first-year law student at The George Washington University Law School (GW) during the 2021-2022 academic year, and we have maintained a relationship since then.

Superior First-Year Performance
My academic relationship with Ms. Dion began in August 2021, when she became a student in the First-Year class at GW. My course lasted for two semesters and covered legal research, predictive legal analysis, persuasive argumentation, legal citation, oral advocacy, and various ethics issues. As part of that program, Ms. Dion prepared two legal memoranda, a trial brief, and an appellate brief. She also argued off of both of her briefs.

Ms. Dion possesses numerous talents and has developed the necessary skills for success in supporting the judicial process. She ranks high in her class, demonstrates the commitment necessary to master new and more challenging skills—both in doctrinal and practice skill courses, and, as explained more below, has a stellar attitude about handling challenges.

She has enhanced her outstanding First-Year accomplishments during her recent judicial internship and participation in such activities as a member of *The George Washington Law Review* and Moot Court Board.

Leadership Success in Dean's Fellow Role
Ms. Dion also has served as a Teaching Assistant and a Research Assistant to members of our faculty. In these capacities, she has devoted significant time to honing critical thinking skills and to aiding others do the same. It may be that Ms. Dion spent two years working at a well-respected law firm prior to attending law school or that she is a skilled writer and speaker, but it was apparent from her participation in collaborative assignments in my Fundamentals of Lawyering class that she possessed a level of understanding of critical principles that made it possible for her to be of immediate assistance to colleagues. I would expect her to show that same level of cooperation with peers during a clerkship in your chambers. As a result of my observation of her skill in working with others, I hoped she might serve as a Dean's Fellow (Teaching Assistant) for my students in the coming year. Sadly, our schedules did not work out, but I was delighted to recommend her to one of my colleagues. I anticipate that she will make an excellent addition to his class.

With respect to her own writing, Ms. Dion consistently demonstrated excellence in research, writing, and identifying issues and approaches for resolving them. Her memoranda and briefs were outstanding in her class — all of whom worked hard. I would match her skills against those of the best law students with whom I have worked. She will prepare the most nuanced analysis with a keen eye on what is practicable under the circumstances.

Prospects for Success in Clerkship
Ms. Dion easily expresses her thoughts on straightforward and complex issues in an articulate manner that sometimes does not appear in law students until the third year of law school or in practice. I have found her legal research thorough, her legal analysis grounded in logic, and her legal writing of superior quality.

In summary, Ms. Dion is everything an employer could want: committed, insightful, detail-oriented, well balanced in her analytical and communication skills, able to receive and offer instruction, able to work together or independently, and deserving of trust. These skills should serve her well in the capacity of judicial clerk. For these reasons, I unreservedly recommend her for a judicial clerkship.

Please let me know if I may elaborate on these credentials.

Very Truly Yours,

Cheryl A. Kettler
Associate Professor of Fundamentals of Lawyering

Cheryl Kettler - ckettler@law.gwu.edu - 202-994-0976

June 21, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write in personal support of Ms. Kelsey Dion's application for a clerkship. I am a Circuit Court Judge in Virginia and a Professorial Lecturer of Law at the George Washington University Law School.

I teach Evidence at GWU and Kelsie was a student in my Evidence class. The class had sixty students and Kelsey stood out as one of the most prepared. She possessed an excellent grasp of the Federal Rules of Evidence and contributed enormously to class discussions. She was a frequent visitor at office hours and asked questions that demonstrated a high degree of intellectual curiosity.

If I had funding to hire a law clerk, she would be my first choice. She also has previous judicial clerkship experience.

Please do not hesitate to contact me with any questions or comments.

With best wishes,

Sincerely,

Dale B. Durrer

Professorial Lecturer in Law

durrer@law.gwu.edu

The George Washington University Law School
2000 H Street NW
Washington, DC 20052

June 21, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am very pleased to recommend Kelsey Dion for a clerkship in your chambers. Kelsey has excellent grades, prior judicial internship experience with a federal district court judge, and she is a bright-spirited, even-tempered person who genuinely cares for others and will likely work well in a chambers environment. I am sure she is worth your serious consideration.

Kelsey was in my 35-person Civil Procedure section. Because it's a small class, I get to know the students very well. As it happens, her particular 1L year was a difficult year for me to get to know students because they were all wearing masks, but Kelsey was an exception because she was so clearly a standout performer in class discussions. I noticed her quickly because she was completely on top of the material the very first time I called on her. Then, as the semester progressed I grew more and more impressed, as she was always ready with a response that indicated a deeper understanding of legal reasoning and analysis than I usually see in first semester 1L students.

Kelsey has a great instinct for legal analysis, and she loved all the curlicues of Civil Procedure. My experience is that the students who really get into Civil Procedure are the ones who are likely to excel as law clerks, because most of what goes on in the real world of law involves precise parsing of detailed legal regimes, and Civil Procedure establishes that path.

I asked Kelsey to be my Teaching Assistant this year, both because I felt she had a great grasp of the material and because she seemed to genuinely want to help other students. And she did an excellent job, leading review sessions, drafting comments on practice exams, and keeping me organized throughout the semester. She also helped with cite-checking and other research related to a law review article I wrote this year, and her work was strong.

Finally, Kelsey has a bright, caring personality, and she was a very good mentor to the 1L students in my Civ. Pro. Class this year. She reached out to lots of students, even beyond the normal Teaching Assistant responsibilities, and it's clear that she really cares about others. Particularly given her prior experience working in a federal judicial chambers, I strongly suspect she would be a valuable addition to any chambers family, both from a work and from an inter-personal point of view. Please feel free to contact me if there is any further information I can provide.

Best regards,

Paul Schiff Berman

Paul Berman - pberman@law.gwu.edu - 202-569-6837

Kelsey M. Dion

1444 Rhode Island Avenue NW, Washington, DC 20005 · (978) 808-8947 · kelseydion@law.gwu.edu

WRITING SAMPLE

The attached sample is a mock opinion that I submitted for my Judicial Lawyering course during the fall 2022 semester. The assignment required students to take a closed universe of facts from a real case before the D.C. Superior Court and draft an opinion in response to a pending evidentiary issue. Please note that this writing sample is my own work and has not been substantially edited by any other person.

All individual names and personal details from the original case have been changed to protect anonymity.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Criminal Division – Felony Branch

MEMORANDUM OPINION AND ORDER

This Court was called upon to consider a motion in limine i) to compel Defendant James Rink ("Rink") to display certain of his tattoos to the jury at trial and ii) to admit transcript evidence of a 2015 interview that Rink had with police in which he discussed the meaning of these tattoos. Gov't Mot. at 1, 4.

Rink opposes the motion on the grounds that it is irrelevant, prejudicial, and a violation of his Fifth Amendment rights. Def. Opp. at 1.

For the reasons that follow, the Court will **DENY** the Government's Motion.

I. BACKGROUND

A. Factual Background

The charges against Rink were filed in response to a shooting in the parking lot of Palm Terrace Apartment Complex, in the 700 block of S Street N.W., on November 14th, 2020. Def. Opp. at 2. The Government alleges Rink shot his firearm in an attempt to kill Richard Roe, Gov't Reply at 1, but instead fatally struck Mary Lawson, a sixteen-year-old female. Gov't Mot. at 1. The Prosecution further alleges that Olivia Styles ("Styles"), a juvenile, was present in the parking lot and witnessed the shooting. *Id.* at 2.

B. Procedural History

Rink was charged with first-degree murder while armed and related firearms offenses in November of 2020. Gov't Mot. at 1. Following his indictment, a grand jury returned an additional charge of obstructionist conduct in violation of D.C. Code §§ 22-722(a)(6) and 22-722(a)(2)(A). The Court granted a motion to join the obstruction charge with the other charges pending against him. *Id.* at 2.

The accusation of obstruction arose in response to Styles' appearance and testimony in front of a grand jury. Styles was subpoenaed to appear in court in February of 2021. Def. Opp. at 2. In her first appearance, Styles testified that she was unable to identify any person in surveillance videos from the night of the shooting. *Id*. When she was called to testify for a second time in December 2021, however, Styles identified the man in surveillance videos as [Defendant] Rink. *Id.* When asked why her statements differed from the original hearing, Styles explained that she had downplayed her testimony in February because she was "scared" and believed she was "the only eyewitness." *Id.*

In the time between Lawson's killings and Style's initial appearance in front of the grand jury, the Government alleges Rink communicated with Styles in an attempt to influence her statements through intimidation. Gov't Mot. at 2. Styles testified that, prior to her first grand jury appearance, Rink had called her from jail, stating "you know what time it is?" *Id.*; Def. Opp. at 2. In her testimony in December 2021, Styles was asked explicitly what she thought Rink meant in this call and she speculated, "[Defendant] was basically saying, … he not mad. Because he knows I have to come down here." Def. Opp. at 2.

The Court previously admitted a jail call between Rink and an unidentified caller. Gov't Mot. at 2. In this call, Rink discusses threats he made to an unidentified female, stating, among other things, "I called that bitch and I threatened her" and "I might send you over there to piece her ass up."[1] *Id.* at 3.

The Government now moves to admit two additional pieces of evidence relating to the charge. The first is the transcript of an interview police conducted with Rink in 2015, after he

[1] The Defendant argues that this jail call is inadmissible. *See* Def. Opp. at 1. The Court previously ruled to admit this evidence, and therefore will not revisit the question of admissibility here.

was shot walking home from work (hereinafter, the "transcript"). *Id.* at 4. In this interview, Rink refused to give up the identity of the individual who shot him. He explains the connection between his tattoos and his philosophy on "snitching to the police." *Id.* at 4–7. The Government also seeks to compel Rink to show the tattoos referenced in this interview at trial. *Id.* at 1. They allege that this evidence, if admitted, will show "Both Defendant and Styles states of mind" and provide "context" on the contacts that took place between Styles and Rink. *Id.* at 4.

II. ANALYSIS

Defendant argues that the evidence of his tattoos and the transcript of his 2015 conversation with police are inadmissible because they are irrelevant, unfairly prejudicial, and violate his Fifth Amendment right against self-incrimination. Def. Opp. at 1.

The Court will address each of these arguments in turn.

A. Relevance of Evidence

For evidence to be admissible at trial, it must be relevant. "Relevant evidence is evidence that 'tends to make the existence or nonexistence of a fact more or less probable than would be the case without that evidence.'" *Richardson v. U.S.*, 98 A.3d. 178, 186 (D.C. 2014) (citing *In Re L.C.*, 92 A.3d 290, 297 & n. 21). In evaluating relevance, the court looks to whether the evidence is "related logically to the fact that it is offered to prove, … the fact sought to be established by the evidence [is] material, and the evidence [is] adequately probative of the fact it tends to establish." *Foreman v. U.S.*, 792 A.2d 1043, 1049 (D.C. 2002) (internal citations omitted). The Court notes that the standard for relevance is "not a particularly high bar for the proponent of the evidence to satisfy." *See Richardson*, 98 A.3d. at 186.

Here, the first inquiry is what the Government is offering the transcript and tattoos to prove and whether these facts are material to the obstructionist conduct charge. The next step is to evaluate whether the tattoos and transcript evidence would be probative of those facts.

1. *What is the evidence offered to prove?*

The Government's Motion states that the tattoos and transcript are being offered to show "both the Defendant and witness's understanding of the Defendant's state of mind" and to provide "context [for] the contacts between Ms. Styles and the Defendant," specifically, Defendants' "ability to contact Styles." Gov't. Mot. at 2, 4.

In its reply, however, the Government attempts to reframe the evidence as showing "a party opponent admission." Gov't. Reply at 2, 5. A party may not raise new arguments or issues in a reply brief. *See Akassy v. William Penn Apartments Ltd. Partnership*, 891 A.2d 291, 304 n. 11 (D.C. 2006) ("This issue was not raised in the [Plaintiff]'s brief, and therefore, the argument exceeds the permissible scope of a reply brief"). Because the original motion did not argue that the evidence at issue was being offered as a party opponent admission, the Court will only consider the arguments set forth in the original motion.

A declaration made out-of-court, like the statements in the transcript, qualifies as inadmissible hearsay if it is offered for truth. It is admissible as an exception to hearsay, however, if it is offered to show the state of mind of the declarant. *Clark v. U.S.*, 412 A.2d 21, 25 (D.C. 1980). Here, the declarant, for purposes of the transcript evidence, is Rink. The Government therefore cannot offer this evidence to show anything about Styles' state of mind or her understanding of Rink's state of mind.

2. *Are Defendant's "state of mind" and "context [on] the conversation between [Defendant] and Styles" material to the offense?*

To evaluate whether Defendant's state of mind and the context of the conversation between Defendant and Styles are material, the Court must consider the statutory elements of the offense. Defendant is charged under §§ 22-722(2)(A) and 22-722(6) of the D.C. Criminal Code. These sections state, in part, that obstructionist conduct occurs when an individual "*knowingly* …endeavors to influence, intimidate, or impede a witness… with intent to influence, delay, or prevent the truthful testimony of the person in an official proceeding," or "*corruptly,* or by threats of force, … endeavors to obstruct or impede the due administration of justice in any official proceeding." D.C. Code §§ 22-722(2)(A), 22-722(6) (emphasis added).

Both sections of the statute require that the defendant acted with an intention to obstruct justice. Evidence of obstruction would be material if it "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Boyd v. U.S.*, 908 A.2d 39, 58 (D.C. 2006). Here, context on the alleged call and Rink's state of mind while making the call could help a jury consider whether his actions fit the definition of obstructionist conduct. Rink's state of mind and additional context could provide evidence of whether Rink sought to intimidate Styles on this call, as the Government alleges, Gov't Mot. at 2, or whether Defendant called to explain that he was "not mad" and knew Styles had to appear in court, as the Defense alleges, Def. Opp. at 2. Evidence of Defendant's "life codes" and "his opinion about witnesses who don't mind their own business" could, at least in theory, clarify circumstances that are material to this case. Gov't Reply at 2.

3. *Are the tattoos and transcript probative of these facts?*

The Court next considers whether the Defendant's tattoos and transcript evidence help prove what they are offered to show.

Evidence that is probative of state of mind can take many forms. *See, e.g. Rink v. U.S.*, 388 A.2d 52 (D.C. 1978) (holding that prior conduct toward the victim was relevant to state of mind); *Bennett v. U.S.*, 375 A.2d. 499 (D.C. 1977) (holding that verbal statement "I am scared of [Defendant]" was admissible to show state of mind). Here, the Government alleges that the Defendant's motive for calling Styles was to intimidate her and influence her testimony in front of the grand jury. Gov't Mot. at 2. The Court notes that the transcript evidence and related tattoos are from six years ago. That said, intent to commit a crime can develop over time, and it is possible that the tattoos and transcript could provide some insight on what spurred this intent to intimidate a Styles. While the strength of this evidence may be minimal, given that large time between the transcript statements and the events in this case, this evidence is not, per se, irrelevant.

With respect to the Government's contention that this evidence will "place into context the communication between Defendant and Styles," Gov't Mot. at 4, it is not clear how the tattoos and transcript would serve that purpose. The Government specifies in its brief that this the context will show Rink had "the ability to contact Styles." Gov't Mot. at 2. The Court disagrees. The evidence offered by the Government consists of physical markings on Defendant's body, and a conversation between Defendant and police that took place approximately six years ago. Defendant seemingly did not know Styles at this time, and this evidence relates only to Defendant's own conduct and history. This information has no apparent connection to Styles or their conversation, beyond the speculation that it could inform Defendant's state of mind when he contacted her. It does not provide any insight on Defendant's ability to call Styles, nor say anything about the call itself.

The Court concludes that Defendants' tattoos and the transcript evidence satisfy the requirement of relevance only in the limited capacity of showing the Defendant's state of mind with respect to the phone call.

B. Unfair Prejudice

Even if evidence passes an analysis of relevance, "a trial judge has the discretion to exclude relevant evidence if it's probative value is substantially outweighed by the danger of unfair prejudice." *Campos-Alvarez v. U.S.*, 16 A.3d 954, 960 (D.C. 2011). Specifically, "where hearsay statements," like the out-of-court statements represented in the transcript, "have a highly prejudicial nature, they must be excluded, even if they are probative and fall under the state of mind … exception." *Ashby v. United States*, 199 A.3d 634, 656 (D.C. 2019). In determining whether evidence is prejudicial, the Court considers whether its probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence. *See Johnson v. U.S.*, 683 A.2d 1087, 1090 (D.C. 1996).

Here, although the tattoos and transcript have the slight potential to give context on Defendant's state of mind when he spoke to Styles, there are substantial indicators that this evidence could be confusing or prejudicial.

First, while there is exhaustive list of what can be considered representative of a declarant's state of mind, there are several factors that could complicate a jury's consideration of the tattoos and transcript evidence. A trial judge should exclude "evidence that is too remote in time and place, or completely unrelated or irrelevant to the offense charged" *Winfield v. United States*, 676 A.2d 1, 5 (D.C. 1996) (en banc).

The evidence presented here is too remote, both temporally and factually, from this case. Considering first the timeline, Defendant's statements to police were made approximately six years ago and, presumably, he got the tattoos in question prior to that point. Def. Opp. at 2. The transcript statements were the result of an interview with police after Defendant himself was shot, in which the detective wanted Defendant to identify the shooter. Tr. at 4. These statements are likely reflective of Rink's state of mind about a particularly jarring scenario, in which he was a victim. The statements were made, in part, about the specific individual that the detective was hoping to identify. *See id.* at 8. In the context of the transcript, many of Defendant's answers were responding to questions about the shooting. For instance, at the beginning of the conversation, the detective references directly what happened to Rink, stating, "If you run up on somebody and shoot them., that don't make you a snitch." *Id.* at 1. Defendant's answers, specifically the threatening language, appear to be in reference to the person who shot him, in part, "I might try to put the knife in him when we get outta jail, but I ain't going to tell on him. You know what I mean?" *Id.* at 8.

When state of mind evidence is used, "the declarant's statements are highly probative of his feelings and can be considered competent evidence of his *then existing mental state*." *Clark*, 412 A.2d at 30 (emphasis added). Put simply, it is difficult to establish how the transcript statements, made in response to a different factual scenario many years prior, have a strong nexus to his mental state at the time he allegedly sought to intimidate Styles.

This Court has previously found evidence inadmissible in cases where both the window of time between the prior acts was much shorter, and the factual similarity between circumstances much closer than this case. *See, e.g., Wilson v. U.S.*, 711 A.2d 75, 78 (D.C. 1998) (holding that evidence of a crime that took place three days prior, in the same area, was properly excluded at trial to show that another person may have committed the offense because there was not a enough of a factual link between the crimes); *Bruce v. United States*, 820 A.2d 540, 546 (D.C. 2003) ("the fact that two dissimilar robberies took place in the same block over a four-month period adds nothing to the weight of [defendant]'s showing").

The Government is correct in asserting that the law does not require the prosecution to begin its presentation in the middle of a sequence of interrelated events. *See* Gov't Reply at 5. The events here, however, are hardly interrelated. Alleging that statements in the transcript show a state of mind that, six years later, influenced the Defendant's interactions with Styles would require a jury to engage in a significant amount of speculation. This court has previously noted that if "the probative value of this evidence… is so slight that if presented to the jury it would have required them to engage in idle speculation" it may not be admitted. *See Bruce*, 820 A.2d at 546. Put simply, the evidence offered in this case is only "marginally relevant, too remote in time and place, and thus far too speculative[.]" *Id.* (internal quotations omitted).

Perhaps more importantly, while this evidence is framed by the Government as probative of "state of mind," the Court fears that it is more likely that a jury will view this as evidence that shows Defendant's propensity to act against someone he perceives as a snitch. Propensity evidence shows a defendant's disposition to commit a charged offense, from which the jury improperly could infer the defendant did commit the offense. *See Harrison v. U.S.*, 30 A.3d 169, 176 (D.C. 2011). This evidence, unlike state of mind evidence, is inadmissible. *Id.* The Government concedes in their brief that their intention is to show Defendants prior acts and beliefs may be indicative of his future conduct, stating, "The fact that the defendant, who has held these opinions about snitches for some 20 years … [and] tattoo[ed] them to his body makes the fact that his specific intent was to obstruct justice more likely than if the defendant had no opinions on snitches or witnesses." Gov't Reply at 2.

While limiting instructions are often provided by a trial judge to explain the capacity in which a juror can consider a particular piece of evidence, see *Johnson*, 387 A.2d at 1086, the delineation between using this evidence as an indicator of "state of mind" and unknowingly considering it in the context of "propensity" is nuanced and has the potential to confuse a jury or cause them to misuse the evidence.

The Court finds, on balance, that the minimal probative value this evidence may provide to show Defendant's state of mind is substantially outweighed by its potential for prejudice. For these reasons, the transcript evidence and Defendant's tattoos are inadmissible.

C. Violation of Defendant's Fifth Amendment Rights

Because the balance of relevance and prejudicial harm shows that this evidence is inadmissible, the Court need not address the Fifth Amendment concern. That said, the Fifth Amendment only supports this conclusion.

The Constitution provides that no defendant shall be a witness against himself. U.S. Const. amend. V. Physical traits like tattoos, however, are often admissible for identification purposes. *See, e.g., Jackson v. United States*, 945 A.2d 621, 627 (D.C. 2008). In this capacity, tattoo evidence does not violate the Fifth Amendment.

The Government argues that compelling the Defendant to show his tattoos would not violate his Fifth Amendment rights, likening this case to *Holt v. United States*. 218 U.S. 245 (1910). *Holt* demonstrates that "the prohibition of compelling a man in a criminal court to be witness against himself is … not an exclusion of his body as evidence when it may be material." 218 U.S. at 252–53. The evidence at issue in *Holt*, however, varies widely from the facts here.

In *Holt*, a material question at trial was whether a particular blouse belonged to the defendant. *Id.* at 252. A witness testified that he had seen the defendant put on the blouse and that it had fit him. *Id.* The defendant argued that compelling him to put the blouse on in court violated his Fifth Amendment rights. The Court disagreed, stating that "this objection in principle would forbid a jury to look at a prisoner and compare his features with a photograph in proof." *Id.* This evidence was meant to provide jurors with a visual observation of his physical features - there was no additional meaning to construe from the defendant's body, beyond the fact that the blouse fit him.

Here, however, the tattoos are not offered for visual, physical proof. There is no question of physical fit or the identification of the defendant. As described in the Government's brief and the accompanying transcript, these tattoos are meant to express meaning beyond their physical appearance. The decision in *Holt* specified that the Fifth Amendment prohibits "extort[ing] communication" from an individual in criminal court. *Id.* at 252–53. The Government directly concedes that they intend to use the tattoos to communicate "defendant's life code" and "opinion on snitches." Gov't Reply at 2. Compelling Defendant's to show his tattoos for this purpose would overstep the limitations set by the Fifth Amendment.

III. CONCLUSION

For the foregoing reasons, **Governments'** motion to compel Defendant to show his tattoos and to admit transcript evidence of a 2015 interview with police, Gov't Mot. at 1, 4, is hereby **DENIED.**

SO ORDERED.

Applicant Details

First Name	**Deirdre**
Middle Initial	**N.**
Last Name	**Dlugoleski**
Citizenship Status	**U. S. Citizen**
Email Address	**dnd276@nyu.edu**
Address	**Address** Street **300 4th Street Southeast, Apt. 42** City **Charlottesville** State/Territory **Virginia** Zip **22902** Country **United States**
Contact Phone Number	**18609953079**

Applicant Education

BA/BS From	**Yale University**
Date of BA/BS	**May 2013**
JD/LLB From	**New York University School of Law** **https://www.law.nyu.edu**
Date of JD/LLB	**May 23, 2019**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Moot Court Board**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Moot Court Board**

Bar Admission

Admission(s)	**District of Columbia, New York**

Prior Judicial Experience

Judicial Internships/Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Satterthwaite, Margaret
margaret.satterthwaite@nyu.edu
212-998-6657

Kingsbury, Benedict
benedict.kingsbury@nyu.edu
212-998-6278

Buppert, Gregory
gregory.buppert@defenders.org
202-772-3225

This applicant has certified that all data entered in this profile and any application documents are true and correct.

April 04, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a 2019 graduate of New York University School of Law and am applying for a clerkship in your chambers for the 2024 term or any subsequent term.

I am currently an associate attorney at the Southern Environmental Law Center, where I litigate cases involving natural gas infrastructure before administrative agencies and state and federal courts. This includes drafting memoranda, motions and testimony; interviewing and cross-examining witnesses; and undertaking extensive legal research. Before starting my current position, I worked as a Bertha fellow at EarthRights International, where I completed legal research and drafted memoranda, motions, and briefs in U.S. state and federal courts on corporate accountability for overseas torts and environmental harms. I have also assisted with discovery and settlement. During law school, I obtained extensive litigation and writing experience. I took Federal Courts (taught by Judge Edwards, DC Circuit) and was a member of NYU's Moot Court Board (a journal equivalent), for which I wrote briefs and completed oral arguments at national competitions. In addition, I spent my 2L summer at Norton Rose Fulbright, where I worked closely with attorneys to conduct legal research and individually wrote several client memoranda for project finance litigation cases.

Enclosed please find my resume, writing sample, and transcript. Letters of recommendation from Professor Benedict Kingsbury, Professor Margaret Satterthwaite, and Gregory Buppert will arrive separately. Professor Kingsbury advised my directed research during 3L year; Professor Satterthwaite supervised my work in the Global Justice Clinic; and Mr. Buppert is my direct supervisor at SELC. Below please find the contact information for each of these recommenders:

Prof. Benedict Kingsbury
Vice Dean and Ida Becker Professor of Law
Faculty Director, Guarini Institute for Global Legal Studies
40 Washington Square S., New York, NY 10012
212.998.6278

Prof. Margaret Satterthwaite
Faculty Director and Co-Chair, Center for Human Rights & Global Justice
Faculty Director, Robert L. Bernstein Institute for Human Rights
Director, Global Justice Clinic
245 Sullivan St., New York, NY 10012
212.998.6657

Gregory Buppert
Senior Attorney
Southern Environmental Law Center
120 Garrett Street, Suite 400
Charlottesville, VA 22902
434.977.4090

Respectfully,

/s/
Deirdre N. Dlugoleski

DEIRDRE N. DLUGOLESKI

300 4th St SE, Apt. 42 | Charlottesville, VA 22902 | (860) 995-3079 | dnd276@nyu.edu

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY
J.D., May 2019

Honors: Howard Greenberger Award – *for excellence in comparative law*
Ann Petluck Poses Memorial Prize – *for outstanding clinical work*
National Moot Court Competition Award – *NYCBA Nationals Semi-Finalist*
Global Justice Emerging Scholars Essay Prize
Salzburg-Cutler Fellow in International Law
International Law and Human Rights Fellow
Moot Court Board (journal equivalent)
Dean's Scholarship – *partial tuition scholarship based on academic merit*

Activities: First Generation Professionals, *Professional Development Chair*
Human Rights Scholar, Center for Human Rights & Global Justice

YALE UNIVERSITY, New Haven, CT
B.A. in History, *cum laude*, May 2013

Honors: Fulbright-Nehru Scholar – *Chennai, India*
Phi Beta Kappa
Robert D. Gries Prize – *for the best senior essay in non-European or American history*
South Asian Studies Senior Essay Prize – *for the best senior essay on South Asia*
President's Public Service Fellowship – *for summer work at New Haven non-profits*

EXPERIENCE

SOUTHERN ENVIRONMENTAL LAW CENTER, Charlottesville, VA
Associate Attorney, August 2022 – present
Litigate cases opposing new investment in natural gas infrastructure before administrative agencies and state and federal courts. Draft motions and testimony, interview standing witnesses, and conduct cross-examination. Work with expert witnesses. Conduct legal research and write memoranda as needed.

EARTHRIGHTS INTERNATIONAL, Washington, DC
Bertha Justice Fellow, September 2020 – July 2022
Conducted legal research on U.S. and international law relating to corporate liability for overseas torts. Prepared legal memoranda and filings for U.S. state and federal courts. Worked closely with staff attorneys to write court briefs, including an amicus brief to the Supreme Court. Assisted in managing and updating information (in Spanish) for 200+ plaintiffs in a multi-district class action.

ROBERT F. KENNEDY HUMAN RIGHTS, Washington, DC
Masiyiwa-Bernstein Fellow, September 2019 – August 2020
Conducted extensive legal and factual research for strategic litigation in the Inter-American Court of Human Rights. Drafted briefs, reports, memoranda, testimony, and press releases in English and Spanish.

NORTON ROSE FULBRIGHT, New York, NY
Summer Associate, May 2018 – July 2018
Worked closely with attorneys in the areas of project finance litigation, commercial litigation, and e-discovery. Conducted extensive legal research and writing, with a focus on secured transactions. Wrote client memoranda including memorandum on material breach of contract for a wind energy facility.

PUBLICATIONS

Deirdre N. Dlugoleski, *Undoing historical injustice: the role of the Forest Rights Act and the Supreme Court in departing from colonial forest laws*, 4 INDIAN L. REV. 221 (2020), https://www.tandfonline.com/doi/full/10.1080/24730580.2020.1783941.

Deirdre Dlugoleski
New York University School of Law
Cumulative GPA: 3.42

Spring 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Evidence	Capra	B+	4.0	
Advanced Global Justice Clinic Seminar	Satterthwaite	A	2.0	
American Indian Law	Pevar	A	3.0	
Moot Court Board		CR	1.0	
Role of the Lawyer in Public Life	Bauer	B	2.0	
Spanish for Lawyers	Guerrero-Tabares	CR	2.0	
Advanced Global Justice Clinic	Satterthwaite	A	2.0	

Fall 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Federal Courts and the Appellate Process	Edwards	B+	4.0	
Constitutional Law	Samaha	B	4.0	
Directed Research	Kingsbury	A	2.0	
Moot Court Board		CR	1.0	
Environmental Law and Policy	Revesz	B+	4.0	

Directed Research extended for the full academic year, but credit for this can only be given in one semester at NYU.

Spring 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
International Environmental Law	Rudyk, Stewart	B+	2.0	
Global Justice Clinic	Satterthwaite	A	3.0	
Property	Hulsebosch	B	4.0	
Constitutional Litigation	Koeltl	A-	2.0	
Global Justice Clinic Seminar	Satterthwaite	A	4.0	

Fall 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Quantitative Methods	Rubinfeld, Forrest	A	2.0	
Global Justice Clinic	Satterthwaite	A	3.0	
Corporations	Bubb	B+	4.0	
Marden Competition (Moot Court)		CR	1.0	
Global Justice Clinic Seminar	Satterthwaite	A	4.0	

Spring 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Lawyering	Elmore	CR	2.5	
Criminal Law	Barkow	B	4.0	
Legislation and the Regulatory State	Hills	B+	4.0	
International Law	Weiler	B	4.0	

I also participated in the 1L Reading Group: Cassirer - The Myth of the State (Prof. Mitchell Kane).

Fall 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Contracts	Brooks	B	4.0	
Civil Procedure	Miller	B	5.0	
Lawyering	Elmore	CR	2.5	
Torts	Sharkey	B	4.0	

I also participated in the 1L Reading Group: Cassirer - The Myth of the State (Prof. Mitchell Kane).

April 04, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am happy to submit this letter recommending Deirdre Dlugoleski for a clerkship in your chambers. Ms. Dlugoleski is incredibly bright, highly skilled, and extremely hard working. She is a gifted writer and researcher with outstanding judgment and common sense. She is a generous colleague and a poised communicator. I believe she would make an excellent law clerk.

I have known Ms. Dlugoleski for four years, and my assessment of her is based on an in-depth professional, academic, and personal familiarity with her. She was selected from a large group of applicants for the Global Justice Clinic, which I direct, and she enrolled during her second year at NYU. I was eager to place her on a Clinic project concerning the rights of an indigenous community in Guyana that involved complex international and foreign law issues, as well as a strong data analysis component. Ms. Dlugoleski surpassed all expectations on this project. She rapidly metabolized significant portions of Guyana's mining law, environmental protection law, forestry law, and key instruments protecting indigenous peoples' rights under international law. She then assessed the empirical data the community had gathered against these legal provisions and wrote up a strikingly clear report.

Deirdre's work in the field was equally superlative. Before we traveled to Guyana in January 2018, Deirdre developed two training workshops with her clinic partner for use with our collaborators on the ground. Since both Ms. Dlugoleski and her partner had teaching experience, I expected that both would rise to the occasion. They still exceeded my expectations: I was able to take a back seat and allow them to entirely lead both trainings. The results were well-tailored and engaging, participatory workshops on how indigenous community monitors can target their fact-gathering to demonstrate violations of national and international law.

In addition to the formal training sessions, Ms. Dlugoleski's performance in informal meetings and consultations with our partners was stellar. She approached all of our colleagues as equals, taking every opportunity to learn more about our partners' expertise and knowledge, the challenges they were facing, their objectives for our partnership, and how to improve our work. Throughout the trip, Ms. Dlugoleski was remarkably motivated, proactive, and warm. Resourceful and adaptive, she thrived in this off-the-grid space with no internet or electricity.

Given her outstanding work in the Clinic, I was very pleased when Ms. Dlugoleski offered to spend time in the indigenous villages where we work during the summer of her second year of law school, following her summer clerkship at a law firm. Our clinic partners were excited to welcome her for three weeks, hosting her in several villages and putting her to work on a number of legal projects. While there, Ms. Dlugoleski analyzed the legal requirements imposed by Guyanese and international law on mining companies seeking large-scale environmental licenses. She then conducted a series of interviews in communities concerning the environmental and social risks associated with a proposed gold mine. This work required her to present complex scientific and legal information in a straightforward and concrete style, and to collect community views in an accurate and respectful manner. With the fruit of these interviews, Ms. Dlugoleski drafted a commentary that was later submitted to an official body of the government of Guyana. By the time she left to come back to NYU for the fall semester, Ms. Dlugoleski had transformed in our partners' eyes from a law student assistant to a trusted collaborator in her own right. Ms. Dlugoleski continued to excel in the Advanced Global Justice Clinic during her third year, advancing the ball enormously on the Clinic's work to help our partners integrate legal standards into their monitoring program. By the end of the year it was clear to me that Ms. Dlugoleski was one of the best students I had ever had—and likely ever will have—in the Global Justice Clinic. She was awarded the Petluck Poses Prize for outstanding clinical work at graduation.

In the few years since she graduated, Ms. Dlugoleski has managed to land two of the most coveted fellowships in the human rights world: one at RFK Human Rights and one at Earthrights International. In both organizations, Ms. Dlugoleski engaged in human rights litigation before federal courts, regional tribunals, and international mechanisms. She has also taught several sessions of my human rights advocacy seminar.

I am aware that much of the work I have described in this letter may not seem directly relevant to the role of a federal law clerk. While Ms. Dlugoleski's interests may range across a broader field of interest than some other applicants, I am confident that her analytical abilities, research skills, and adroit writing prepare her to be an excellent law clerk.
In addition to my in-depth knowledge of Ms. Dlugoleski's work and approach, I have come to know her more broadly as a person. I admire and respect her immensely. She is a generous and tireless worker and a wonderful collaborator. She holds herself to incredibly high standards. I recommend her with enthusiasm.

Please do not hesitate to contact me, as I would be very happy to answer any questions you might have.

Yours sincerely,

Margaret Satterthwaite - margaret.satterthwaite@nyu.edu - 212-998-6657

Margaret Satterthwaite
Professor of Clinical Law
Director, Global Justice Clinic
Faculty Director, Bernstein Institute for Human Rights
Faculty Director, Center for Human Rights and Global Justice

Margaret Satterthwaite - margaret.satterthwaite@nyu.edu - 212-998-6657

New York University
A private university in the public service

School of Law

40 Washington Square South, 314D
New York, New York 10012-1099
Telephone: (212) 998-6278
Fax: (212) 995-4341
E-mail: benedict.kingsbury@nyu.edu

Benedict Kingsbury
Vice Dean and Murry and Ida Becker Professor of Law
Director, Institute for International Law and Justice
Faculty Director, Guarini Institute for Global Legal Studies

November 3, 2022

RE: Deirdre Dlugoleski, NYU Law '19

Your Honor:

I am very pleased to recommend Deirdre Dlugoleski to you. She completed her JD here in May 2019. My knowledge of her work comes primarily from close personal supervision of a major directed research project she undertook during her third year, and for which she received a clear "A" grade. Having got to know her quite well and having seen her research and legal writing abilities in the development of that major paper, my assessment of her as a judicial clerk is very favorable. She is superbly well organized, has tremendous initiative and focus, and holds herself to very high standards. She has an impressive appreciation of law and what is has to offer, and a substantial interest in all aspects of litigation and adjudication, exemplified by her substantial and very dedicated involvement in the NYU Law Moot Court Board. She was a truly outstanding performer in the Global Justice Clinic, taught by my tenured colleague Professor Meg Satterthwaite. Meg told me that in Spring 2019 Deirdre worked in a project in Guyana (where she had spent several weeks in rugged forest the previous summer in connection with the Clinic), with the specific assignment of improving and integrating legal empowerment elements to a territorial and events monitoring program that the Clinic's local partners (an indigenous group) run in their customary and titled territories in South Rupununi, Guyana. Meg said "this work has been complex and could have been overwhelming, but Deirdre's talent, intense focus, and commitment to our partners has translated into contributions beyond what I would have expected of any student or even most junior colleagues…. Deirdre has delved into the laws of Guyana for this work, and her careful attention to the Constitution, relevant mining and forestry statutes, and regulatory framework have been excellent."

A culmination of Deidre's work in the Clinic (on projects in Haiti and Guyana) and her work on the paper I supervised (on India), was Deidre receiving not one but two graduation awards, one for clinical excellence, the other the Howard Greenberger award for the best paper in comparative law.

Deirdre's paper that I supervised was on India's Forest Rights Act of 2006, and practical applications of it and challenges to it, particularly in India's Supreme Court. This is the legislation which formalizes various land, land/forest use, governance and consultation rights

Deirdre Dlugoleski, NYU Law ’19
November 3, 2022
Page 2

for a large number of traditional dwellers in and users of forests and forest lands in India. The paper is a very thoughtful and well-researched study of how this Act came to be adopted (a large puzzle given it conflicts with interests of major corporations and their clients), how it has been implemented (regulations, court decisions, etc.), how it has survived in the Modi era, and what its implications are. The reach and scale of this statute is enormous – during 2019, the Indian Supreme Court was considering requests by wildlife conservation groups that 21 Indian states expel from protected forest areas nearly 1.9 million families whose tribal claims to land rights under the Act had been rejected. She did a tremendous amount of work digging up data sets on forest cover, demographics, and implementation of the statute in different Indian states, building her understanding not only of the statute but of Indian forest, land, constitutional and procedural law, familiarizing herself with Indian case law, and constructing a persuasive and original analysis. She had gotten interested in India as an undergraduate at Yale, and had a Fulbright there after graduating. Her interest in this particular topic arose when she returned to India for the summer after her first year of Law School, to work at the Human Rights Law Network in Delhi, and had the assignment of preparing a petition to the Indian Supreme Court relating to this statute. It was a real pleasure to supervise her work on this paper. She took suggestions and guidance on board very fully, she was 100% on time with every deadline in the writing process, and she pursued each new aspect of the research and writing with tremendous discipline and hard work. She has abundant drive and initiative, and listens well and carefully. The paper won a prize at an internal scholarly conference here, and she was selected also to present it at the Salzburg Seminar in Washington DC. The paper was subsequently accepted and published by the *Indian Law Review*, a high-quality peer reviewed scholarly journal with eminent editors.

Deirdre combines exceptional drive with a strong interest in law in general and judicial work in particular – it was this set of interests that brought her to Law School, and it has intensified through her work here. She is on the public interest law track – in 2019-20 she held a fellowship at the Robert F Kennedy Center for Justice & Human Rights in Washington, DC, and for the next two years was at Earthrights working on litigation concerning matters such as lender liability and immunity of international organizations. Earlier she has worked in a major commercial law firm (Norton Rose Fulbright). Her interests are wide. She is an impressive person. I am very pleased to recommend her to you.

Yours sincerely,

Benedict Kingsbury

Benedict Kingsbury

SOUTHERN ENVIRONMENTAL LAW CENTER

120 Garrett Street, Suite 400
Charlottesville, VA 22902

Telephone 434-977-4090
Facsimile 434-993-5549

February 13, 2023

Re: Letter of Recommendation for Deirdre Dlugoleski

Your Honor:

I am writing to recommend Deirdre Dlugoleski for a judicial clerkship in your chambers. I have the pleasure of working with Ms. Dlugoleski at the Southern Environmental Law Center (SELC), one of the nation's premier environmental legal advocacy organizations, where I am a senior attorney and manage a team that she joined in August 2022. My practice involves regulatory advocacy and litigation at all levels of the federal court system related to energy infrastructure.

Over the last nine years at SELC, I have supervised many associate attorneys from top-ranked law schools. Ms. Dlugoleski stands out among this group in several important ways. First, she vigorously engages with the facts which can be dauntingly technical for energy projects. Where other associate attorneys have sometimes found technical details overwhelming, I have been impressed with Ms. Dlugoleski's interest in understanding the details we encounter and her ability to investigate them and identify those with relevance to a given case.

Second, Ms. Dlugoleski is exceptionally organized. She works quickly, comes prepared to meetings, adheres to internal deadlines and workplans, and communicates effectively about her progress. She often takes the initiative without prompting and puts in extra hours in the evening or on the weekend. In addition to managing her assignments efficiently, Ms. Dlugoleski helps me coordinate the significant caseload that our team is handling across six southeastern states including creating a research database of court decisions to help us stay up to date on the developing law of climate change. In her short tenure, she has suggested several tools and techniques to improve the systems of our team. I can quite fairly report that she is unique among the attorneys I have supervised in this respect.

Third, Ms. Dlugoleski has demonstrated a well-developed internal sense of judgment. She is fair-minded when assessing the merits of our legal and factual positions, which makes her a perceptive advocate and I am confident would make her an effective and even-handed law clerk. In the execution of her projects and assignments, Ms. Dlugoleski understands when to ask for additional guidance and when to pursue a lead further on her own in legal or factual research. She always asks for and graciously accepts constructive feedback on her work product. Ms. Dlugoleski is, of course, a capable and effective legal researcher and writer.

Finally, Ms. Dlugoleski is a thoughtful colleague with a refined sense of humor and has been a welcome addition to our office. For these reasons, I have no reservations in recommending her for a clerkship in your chambers, and I would be pleased to discuss her application at your convenience.

Sincerely,

Gregory Buppert

Gregory Buppert

Deirdre N. Dlugoleski

300 4th St. SE, Apt. 42 | Charlottesville, VA 22902 | (860) 995-3079 | dnd276@nyu.edu

WRITING SAMPLE

Note of Explanation

This writing sample is a memo I wrote, over a four-day period, in preparation for drafting a section of an amicus brief to the U.S. Supreme Court for *Nestlé USA, Inc. v. Doe*, 593 U. S. ____ (2021). The goal was to explore and evaluate the potential international law arguments for establishing U.S. responsibility for the overseas human rights violations of its corporations.

To: [OMITTED]
From: Deirdre Dlugoleski
Re: potential U.S. liability for extraterritorial corporate actions under international law
Date: 10/9/2020

I. Overview

This document provides a menu of options for attempting to establish United States responsibility for the extraterritorial actions of its corporations under international law (specifically, Nestlé's use of child slave labor in Côte d'Ivoire). First, it discusses the U.S. government's and Supreme Court's treatment of state responsibility with respect to the concerns of the 18th-century United States – essentially, avoiding diplomatic strife and the potential for war. Although it is unlikely that either Mali (the home country of the plaintiffs) or Côte d'Ivoire would threaten war with the U.S. or attempt to invoke state responsibility in the circumstances of the present case, the risk of incurring state responsibility for the actions of private parties maps to the concerns of the Framers and writers of the Judiciary Act.

With this in mind, there are several ways states could potentially invoke the international responsibility of the United States for the extraterritorial torts of its corporations. Most relevant here, the U.S. could be seen as complicit in an internationally wrongful act by allowing the corporation to operate in partnership or collaboration with actors that violate human rights; the U.S. could also be liable for implicitly accepting such a situation through allowing its corporation to undertake its usual activities in Côte d'Ivoire. Moreover, by failing to prevent a U.S. corporation from causing harm overseas, the U.S. could be liable for breaching its obligation of due diligence. The U.S. could also face liability for violating a treaty in which it commits to preventing child slave labor.

In any of these possibilities, however, the odds for reparations are slim. In most of these scenarios, only states can bring claims – which means that the form or distribution of reparations may not be in the best interests of the actual victims. Moreover, with respect to treaty violations, the instrument in question does not specify the jurisdiction of the International Court of Justice (ICJ); under this theory of liability, reparations would be virtually impossible.

1

II. Discussion of State Responsibility in Government Briefs and the Supreme Court

In its supplemental amicus brief in *Jesner*, the United States notes that "[t]he requisite claim-specific inquiry [with respect to the ATS] necessarily takes place against the backdrop of the ATS's function of providing redress in situations where the international community might consider the United States accountable."[1] For this proposition, the government cites:

- *Kiobel* – "The United States was, however, embarrassed by its potential inability to provide judicial relief to foreign officials injured in the United States. Such offenses against ambassadors violated the law of nations, 'and if not adequately redressed could rise to an issue of war.' The ATS ensured that the United States could provide a forum for adjudicating such incidents."[2]
- *Sosa* – "An assault against an ambassador, for example, impinged upon the sovereignty of the foreign nation and if not adequately redressed could rise to an issue of war. It was this narrow set of violations of the law of nations, admitting of a judicial remedy and at the same time threatening serious consequences in international affairs, that was probably on the minds of the men who drafted the ATS with its reference to tort."[3]
- *RJR Nabisco* – The pages the government cites to in this case do not explicitly address the question of when a tort committed by U.S. citizens, domestically or abroad, could potentially implicate state responsibility.[4]

The discussion in these cases examines the international law concerns of the United States in the 1780s. The main sources the Supreme Court considered include:

- The Federalist papers No. 80 (Hamilton) – "[a]s the denial or perversion of justice . . . is with reason classed among the just causes of war, it will follow that the federal judiciary ought to have cognizance of all causes in which the citizens of other countries are concerned."[5]
- *Federal Jurisdiction over International Law Claims: Inquiries into the Alien Tort Statute* (1985) – "Second, federal jurisdiction was created in connection with the United States' responsibility for injuries to aliens. According to Professors Henkin, Pugh, Schachter, and Smit: 'State responsibility arises only if the act or omission of the state causing the injury is wrongful under international law.' An alien's injury may be directly caused by the state, as through physical injury or confiscation of property. **Such an injury may also**

---

[1] Supplemental Amicus Brief for the United States at 26, *Jesner et al., v. Arab Bank,* PLC, 138 S. Ct. 1386 (2018) (No. 16-499) 2017 WL 2792284.
[2] *Kiobel v. Royal Dutch Petro. Co.*, 569 U.S. 108, 122-23 (2013) (citing *Sosa v. Alvarez-Machain*, 542 U.S. 692, 715-18 (2004)).
[3] *See Sosa*, 542 U.S. at 715.
[4] The closest the discussion comes is describing the two-step framework for analyzing extraterritoriality in *Morrison* and *Kiobel*: first asking whether the presumption against extraterritoriality has been rebutted, and then, if the statute is not extraterritorial, determining whether the case involves a domestic application of the statute (by looking at the statute's "focus"). If the relevant conduct occurred in the U.S., domestic application is permissible even if other conduct occurred abroad, but "if the conduct relevant to the focus occurred in a foreign country, then the case involves an impermissible extraterritorial application regardless of any other conduct that occurred in U.S. territory." *See RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090, 2101 (2016).
[5] THE FEDERALIST No. 80 (Alexander Hamilton).

2

be caused by the denial of justice to an alien, such as: [B]y a failure by the state to provide redress for an injury inflicted on the alien by some private person – for example, a failure of the state to provide judicial remedies to an alien on whom physical or economic injury has been inflicted by a resident of the state."[6]

- E. de Vattel's *Law of Nations*,[7] a 1758 legal treatise on international law that has not been digitized, to the best of my knowledge.

Essentially, the Framers and drafters of the Judiciary Act were concerned with avoiding diplomatic strife that could lead to war. It is unlikely that states today would threaten war over corporate violations of human rights. Still, situations in which other states would be able to invoke the international responsibility of the U.S. (and possibly bring a case to the International Court of Justice (ICJ)) map to 18th century concerns over U.S. liability for the actions of private parties.

III. Potential Avenues for Establishing U.S. Liability

A. Under the International Law Commission's 2001 Draft Articles on Responsibility of States for Internationally Wrongful Acts

Today, the kind of state responsibility the Framers/drafters of the Judiciary Act worried about is codified in the International Law Commission's 2001 Draft Articles on the Responsibility of States for Internationally Wrongful Acts (hereinafter "Draft Articles on State Responsibility" or "Draft Articles"),[8] which, in most cases, are commonly acknowledged as customary international law.

Broadly, under the Draft Articles, states incur international responsibility for (1) a breach of an international legal obligation when (2) the act can be attributed to the state.[9] The interpretation of both of these elements is important for potential U.S. liability in the *Nestlé* case.

<u>Breach of international legal obligations</u>

Article 3 establishes that characterization of an internationally wrongful act is governed by international law, and is not affected by its characterization as lawful by a state's internal law. This means that any laws passed in Côte d'Ivoire, Mali, or the United States in the corporation's favor have no bearing on potential U.S. liability under international law.[10]

---

[6] Kenneth C. Randall, *Federal Jurisdiction over International Law Claims: Inquiries into the Alien Tort Statute*, 18 N.Y.U. J. OF INT'L L. & POL. 1, 20 (1985-1986) (internal citations omitted).

[7] E. DE VATTEL, LAW OF NATIONS, PRELIMINARIES § 3 (J. Chitty et al. transl. and ed. 1883).

[8] International Law Commission, *Draft Articles on the Responsibility of States for Internationally Wrongful Act*s, *with commentaries*, Report of the International Law Commission on the Work of its 53rd session, A/56/10, August 2001, UN GAOR. 56th Sess Supp No 10, UN Doc A/56/10(SUPP) (2001), <u>https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf</u> (hereinafter "Draft Articles").

[9] *Caire Claim* (France v. Mexico) (1929) 5 R.I.A.A. 516.

[10] In fact, the United States brought the lawsuit that established this precedent. In the 1872 *Alabama* arbitration, the United States invoked the international responsibility of the United Kingdom (which had declared neutrality during the Civil War) for a British (private) company's supply of ships to the Confederacy, which then damaged Union ships. The arbitral award held that the provision of such ships was an internationally wrongful act in spite of the fact

Acts attributed to the state

It is a virtual certainty that the United States would not be directly liable for the overseas torts of its corporations. Under Articles 4 and 8, states are responsible for the actions or omissions of their own organs, whether de jure or de facto, or by non-state actors operating on the instruction of, or under the "direction or control" of, the state.[11]

The ICJ has interpreted this to mean that, although states may not hide behind their own internal legal system to evade international responsibility, persons or entities are only equated with state organs when the relationship is one of "complete dependence" on the state,[12] and the private party lacks "any real autonomy."[13] In the *Genocide Convention* case,[14] the ICJ examined whether or not Serbia could be held responsible for the Srebrenica massacre (undertaken by Bosnian Serbs in Bosnia). The Court accepted on the facts that the perpetrators of the Srebrenica massacre, belonging to organs of the Republika Srpska in Bosnia (a "non-state" entity) had been recruited before the independence of Bosnia and Herzegovina, and that the Serbian government had provided military and financial support.[15] Moreover, the Court also noted that without Serbian support, the perpetrators would not have been able to undertake the "crucial or most significant military and paramilitary activities."[16] Even so, the Court held that because the Bosnian Serb forces had some autonomy, their actions were not automatically attributable to Serbia.[17]

The Court also examined whether, while not organs of the Serbian government, the perpetrators were acting under Serbian direction and control in light of ILC Article 8. The Court held that, because the state only exercises effective control in respect to each specific internationally wrongful act (*i.e.*, general control is insufficient), the Serbian government would only be responsible if the facts showed "the physical acts constitutive of genocide that have been

---

that the ship builder's conduct was legal in the U.K. *See generally*, Alabama claims (U.S. v. U.K.), 24 R.I.A.A. 125-134 (Trib. of arb. Est. by Art. I, Treaty of Washington of 8 May 1871, 1872).

[11] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, Judgment, I.C.J. Rep. 2001 (Sept. 10), at 377-78; *see also* Article 4: Conduct of organs of a State. 1) The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State. 2) An organ includes any person or entity which has that status in accordance with the internal law of the State. Article 8: Conduct directed or controlled by a State. The conduct of a person or group of persons shall be considered an act of the State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.

[12] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* at 393; *see also Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Rep. 1986 (June 27), at 109.

[13] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* at 394.

[14] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, Judgment, I.C.J. Rep. 2001 (Sept. 10).

[15] *Id.* at 238-39, 388.

[16] *Id.* at 400.

[17] *Id.* at 394 (citing *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* at 111).

committed by organs or persons other than the State's own agents were carried out wholly or in part, on the instructions or directions of the State, or under its effective control."[18]

Territoriality

In *Democratic Republic of Congo v. Uganda*, the ICJ held that the obligations of all states under all international human rights instruments to which a state is a party and under customary international law apply extraterritorially – *i.e.*, with respect to anyone within the power or effective control of the state.[19] Human Rights bodies such as the Inter-American Commission[20] and the Human Rights Committee[21] have followed suit.

In this respect, corporate activity can trigger state responsibility under the Draft Articles in three ways. The first two of these, based in Articles 4 and 8 (above), would require corporations to either **(1) exercise elements of government authority such that it could be considered an organ of the government** or **(2) act under the direction or control of the government**. In this case, both are impossible. Procuring cocoa is not a government function, and there is no indication that Nestlé acted on the direction or under the control of the United States.

The United States could, however, still face liability under international law for complicity in an internationally wrongful act, or its failure to prevent/implicit legitimation of a situation that violates a peremptory norm of international law (in this case, child slave labor).

1. **Article 16**

Under Article 16 of the Draft Articles on State Responsibility: "[a] State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State."

The ILC's commentary on Article 16, moreover, gives examples of situations in which a state would be responsible for aiding and assisting, including "facilitating the abduction of persons on

[18] *Id.* at 401.
[19] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda*), (Merits) (2006) 45 ILM 271 at [217].
[20] "[T]he term 'jurisdiction' in the sense of Article 1(1) is [not] limited to or merely coextensive with national territory. Rather, the Commission is of the view that a state party to the American Convention may be responsible under certain circumstances for the acts and omissions *of its agents* which produce effects or are undertaken outside that state's territory." I/A Comm. H.R. *Saldano v Argentina*, March 11, 1999, para. 17.
[21] The Human Rights Committee has interpreted Art. 2(1) of the International Covenant on Civil and Political Rights (ICCPR) to extend state responsibility of ensuring Covenant rights to both individuals (*i.e.*, third parties) within the state's territory and those outside the state's territory who are subject to its jurisdiction. HRC, General Comment No 31(80) Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13, 26 May 2004 at 3; *see also* Robert McCorquodale & Penelope Simons, *Responsibility beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law*, 70 MODERN L. REV. 598, 603 (2007).
"Jurisdiction" has been construed to mean "anyone within the power and effective control of that State Party, even if not situated within the territory of the State Party . . . regardless of the circumstances in which such power or effective control was obtained." HRC, General Comment No. 31(80) at 10.

foreign soil."[22] It does not seem likely that the United States assisted Mali or Côte d'Ivoire in the procurement or perpetuation of child slavery. Some scholars, however, have argued that because international law has evolved to the point of recognizing that corporations themselves can perpetrate violations, corporate complicity in international crimes could incur international responsibility on the part of the corporation's home state.[23] To argue this, however, one would need to show:

- That the home state had aided or assisted the corporation and that such aid had 'contributed significantly to that act.'[24] (There is no requirement for the assistance to have been essential to the wrongful act.[25])
- That the home state gave aid "with a view to facilitating the commission of the wrongful act," and that the aid had actually done so.[26]
- That the home state was "aware of the circumstances of the internationally wrongful act in question."[27]

One scholar also argues that the provision of services to promote the foreign direct investment of corporations (for example, by providing financing through export credit agencies), could be sufficient to count as aiding and assisting internationally wrongful acts, if the host state is allowing the corporation or its subsidiary to operate within its territory in violation of international human rights obligations (which it has a duty to protect). In this case, the host state is violating human rights law with respect to permitting the corporation's activities, and the corporation's home state is liable for facilitating the conduct.[28]

2. Articles 40 and 41

In addition to Article 16, Articles 40 and 41 impose similar obligations on states.

> *Article 40*
>
> 1. This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law. 2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation.
>
> *Article 41*
>
> Particular consequences of a serious breach of an obligation under this chapter. 1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40. 2. No State shall recognize as lawful a situation created by a

[22] *Draft Articles* at 66, cmt. 1.
[23] *See, e.g.*, McCorquodale & Simons, *supra* note 21 at 613-14.
[24] *Id.* at 614 (citing *Draft Articles* at 149, cmt. 5.
[25] *Draft Articles* at 66, cmt. 5.
[26] *Id.*
[27] *Id.*
[28] *See* McCorquodale & Simons, *supra* note 21 at 613.

> serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation [. . .]"

The ILC commentary specifies that the prohibition on recognition of these situations refers to not only formal recognition, but also acts that would imply recognition.[29] The ICJ construed this language in the *Israeli Wall Advisory Opinion (Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory)*. The Court held that, because the construction of the wall involved serious breaches of Israel's obligations to "respect the right of the Palestinian people to self-determination and [. . .] obligations under international humanitarian law and international human rights law,"[30] other states were obligated to refrain from recognizing the legality of the situation, and not to aid or assist the maintenance of that situation.[31] Although the ICJ did not refer specifically to Art. 41 of the Draft Articles, it did use the article's actual words.

In this respect, a state allowing its corporations to do business in such an environment could arguably be liable for recognizing the legality of the host state's conduct.

***

Available reparations under the Draft Articles include restitution, compensation, or satisfaction.[32] In principle, if restitution is impossible or would result in a disproportionate burden,[33] the injuring state can pay compensation for financially assessable loss (Art. 36); if compensation is also impossible, the responsible state must give satisfaction for the injury caused (Art. 37). **The injured state, however, may choose the form of reparations** (Art. 43). This is a major disadvantage, since the state claiming injury may not always act with the victims' best interests in mind. The same logic holds in the situations in which a non-injured, third-party state may sue (see below).

B. Due diligence

States may not cause transboundary harm (*i.e.*, pollution) from activities arising in their own territory.[34] While this principle developed within international environmental law, it has parallels in human rights law in terms of a responsibility to exercise due diligence. When a private entity or individual has breached an international law norm, the act cannot be attributed to the state – but the state has breached its own due diligence obligations to prevent and punish such violations.[35] Moreover, some scholars argue that

> "[W]here a state has 'sufficient knowledge' of the human rights impact of such activity in the host state, the home state has a duty to prevent and mitigate the risk by adopting

---

[29] *Draft Articles* at 115, cmt. 5.
[30] Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. Rep. 136 (Jul. 9), ¶ 149.
[31] *Id.* at ¶ 159.
[32] *Draft Articles*, Arts. 35-37.
[33] *Draft Articles*, Art 35.
[34] Trail Smelter Arbitration (U.S. v. Canada) (1938 and 1941) 3 R.I.A.A. 1905 (Trail Smelter Arb. Trib.) at 331.
[35] TIMO KOIVUROVA, DUE DILIGENCE 35 (2010) Max Planck Encyclopedias of Int'l L..

> legislation to this end. A failure to do so would amount to a breach of the international obligation to exercise due diligence, for which international responsibility arises."[36]

States must exercise due diligence in exact proportion to the risks involved in a third party's conduct.[37]

The ICJ, at least, also considers the degree to which a state is capable of undertaking due diligence. In the *Nicaragua* case, the ICJ examined whether the government of Nicaragua had breached its obligation of due diligence with respect to preventing arms traffic through its territory to El Salvador. In its decision, it stated:

> "[I]t would clearly be unreasonable to demand of the Government of Nicaragua a higher degree of diligence than is achieved by even the combined efforts of the other three States . . . **Finally, if it is true that the exceptionally extensive resources deployed by the United States have been powerless to prevent this traffic from keeping the Salvadorian armed opposition supplied, this suggests even more clearly how powerless Nicaragua must be with the much smaller resources at its disposal** for subduing this traffic if it takes place on its territory and the authorities endeavor to put a stop to it."[38]

This logic suggests the opposite is also true – namely, that the ICJ would be more inclined to find a breach of due diligence in situations like the case at hand, in which the United States is perfectly able to exercise a high degree of control over its corporations, should it choose to do so.

Cases alleging a breach of due diligence would likely end up in the ICJ. Because only states can sue states in the ICJ, however, the same problems with reparations described above exist in this scenario.

C. Liability under Specific Treaty Provisions

Most human rights treaties delineate states' general obligations to guarantee human rights to all individuals in their jurisdiction. Some treaties include explicit language requiring States Parties to prevent specific violations of human rights. The ICJ construed such language in the *Genocide Convention* case. Although the Court could not find the actions of the Bosnian Serbs that perpetrated the Srebrenica massacre attributable to Serbia, it did find Serbia liable for genocide on the basis of its failure to prevent, an obligation under the Genocide Convention.[39]

In this respect, similar logic could apply to the United States' failure to prevent the use of child slave labor by its corporations. One treaty that the United States has signed and ratified, ILO Convention No. 182 – Worst Forms of Child Labour (1999),[40] imposes an obligation to actively

---

[36] *See, e.g.*, McCorquodale & Simons, *supra* note 21 at 619.
[37] *See, e.g.*, Alabama claims (U.S. v. U.K.), 24 R.I.A.A. 125-134 (Trib. of arb. Est. by Art. I, Treaty of Washington of 8 May 1871, 1872).
[38] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* at 157.
[39] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* at 438.
[40] Article 1, for example, requires each member to "take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency." Article 7(1) requires members to "take all

prevent child slavery. This does not mean, however, that an international body would necessarily find the United States liable for a violation. While the Genocide Convention at issue in the ICJ case against Serbia specified the Court's jurisdiction for the alleged violations, the ILO Convention on the Worst Forms of Child Labor does not.

That said, it may be possible for a state to take a treaty violation to the ICJ on the basis of the ILC Draft Articles on State Responsibility. Importantly, ILC Article 48(1)(a) specifies that non-injured states can invoke the responsibility of another state if "the obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group." The commentary to Article 48 specifies that this could include "a regional system for the protection of human rights;"[41] the principal purpose of such an obligation must be to "foster a common interest, over and above any interests of the States concerned individually"[42] – for example, situations in which States, "attempting to set general standards of protection for a group or people, have assumed obligations to protect non-State entities."[43] Moreover, the commentary to Article 48 refers to the ICJ's guidance in *Barcelona Traction*, which construed obligations *erga omnes* to include "the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination."[44] This means that a third party state could sue the U.S. for violating treaties it signed that require it to prevent slavery and child labor – specifically, ILO No. 182.

With respect to reparations, when a state that hasn't been injured alleges a breach of a peremptory norm under the Draft Articles, it can call for cessation and assurances and guarantees of non-repetition, compliance with the obligation of reparation to the injured state, or, if these are denied, take counter-measures against the violating state.[45] As explained above, this arrangement does not necessarily guarantee the victims' best interests.

necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention *including the provision and application of penal sanctions, or as appropriate, other sanctions*."

[41] *Draft Articles* at 129, cmt. 7.

[42] *Id.*

[43] *Id.* at. 126-27, cmt. 7.

[44] *Id.* at 127, cmt. 9.

[45] JAMES R. CRAWFORD, STATE RESPONSIBILITY ¶¶ 49-51 (2006) Max Planck Encyclopedias of Int'l L.

Applicant Details

First Name	**Adam**
Last Name	**Domitz**
Citizenship Status	**U. S. Citizen**
Email Address	**ad3144a@american.edu**
Address	**Address** Street **875 N St. NW Apt 501** City **Washington** State/Territory **District of Columbia** Zip **20001** Country **United States**
Contact Phone Number	**651-356-5978**

Applicant Education

BA/BS From	**Concordia College-Moorhead**
Date of BA/BS	**May 2017**
JD/LLB From	**American University, Washington College of Law** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=50901&yr=2010**
Date of JD/LLB	**May 18, 2024**
Class Rank	**10%**
Law Review/ Journal	**Yes**
Journal(s)	**American University Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Moot Court Honor Society**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Professional Organization

Organizations	**Just the Beginning Organization**

Recommenders

Franck, Susan
sfranck@wcl.american.edu
Wermiel, Stephen
swermiel@wcl.american.edu
(202) 274-4263
Rathod, Jayesh
jrathod@wcl.american.edu
202-274-4459

This applicant has certified that all data entered in this profile and any application documents are true and correct.

ADAM S. DOMITZ
Washington, DC 651-356-5978
Adam.Domitz@student.american.edu https://linkedin.com/in/adamdomitz/

June 12, 2023

The Honorable Jamar K. Walker
U.S. District Court
Eastern District of Virginia
600 Granby St.
Norfolk, VA 23510

Dear Judge Walker,

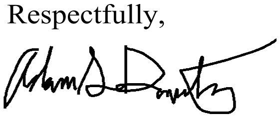
I am a rising 3L at American University Washington College of Law (AUWCL) and I am writing to apply for a clerkship with your chambers for the 2024–25 term. I am also interested in a latter term. I am the Editor-in-Chief of the American University Law Review and have a 3.85/4.0 GPA, putting me in the top 10% of my class. I am specifically interested in clerking for Your Honor because your presence on the Court means a lot to me as a queer law student. I believe my research and writing skills, professional experience, and committed work ethic would make me an asset to your chambers.

I am a strong researcher and writer. As an Immigration Services Officer at U.S. Citizenship and Immigration Services prior to law school, I conducted legal research and composed and issued thorough legal decisions that consistently withstood administrative review. Because of my attention to detail and writing ability, management often assigned me duties typically reserved for senior officers, including collaborating with legal counsel to craft decisions for exceptionally difficult cases. I translated these skills successfully at AUWCL, where I received the highest score in my legal research and writing course, have served as a Research Assistant to Professor Jayesh Rathod, and where my comment will be published in the American University Law Review. Additionally, during my internship with Judge Paula Xinis of the U.S. District Court for the District of Maryland, I served as the lead drafter of eight memorandum opinions, which allowed me to fine-tune many skills, such as multi-tasking under time constraints, consistency, and attention to detail.

Further, my leadership experience and strong work ethic have prepared me to contribute to your chambers. At AUWCL, I am in the top 10% of my class, serve as the Editor-in-Chief of the American University Law Review, and recently served on the executive board of the Moot Court Honor Society as a co-director of the Wechsler First Amendment Moot Court Competition. Additionally, as a volunteer with my school's chapter of the International Refugee Assistance Project, I conducted research for the national litigation team and received an award honoring my exceptional service.

I am confident that my strong academic record, professional experience, and dedication to exceptional work product would make me an ideal law clerk. Enclosed are copies of my resume, writing sample, references, and unofficial transcript. Thank you for your consideration.

Respectfully,



Adam S. Domitz

ADAM S. DOMITZ

Washington, DC 651-356-5978
Adam.Domitz@student.american.edu https://linkedin.com/in/adamdomitz/

EDUCATION

American University Washington College of Law – Washington, DC ***May 2024***
Juris Doctor candidate | GPA: 3.85 (Top 10%)
Activites: Editor-in-Chief, American University Law Review | Moot Court Honor Society, Wechsler Competition Director
Teaching Assistant for Civil Procedure (Fall 2023)
Honors: Highest Grade for Legal Research & Writing I, Civil Procedure, and Immigration & Nationality Law
Publications: Comment, *Ganging Up On Terrorism: Transnational Gangs and Tier III Terrorist Organizations*, 72 AM. U.L. REV. __ (forthcoming 2023).

Concordia College – Moorhead, MN ***May 2017***
Bachelor of Arts in Political Science, Bachelor of Arts in Global Studies, History minor
Honors: Dean's List (5 semesters) | Sigma Iota Rho, chapter president
Study Abroad: American University of Cairo (Spring 2016)

EXPERIENCE

Mayer Brown LLP – New York, NY ***May 2023 – July 2023***
Summer Associate
- Conduct research for associates and partners relating to biosimilar pharmaceutical patents, tax controversies, international arbitration, and breach of contract. Observe depositions and discuss case strategy with associates.

American University Washington College of Law – Washington, DC ***June 2022 – present***
Research Assistant to Professor Jayesh Rathod
- Research domestic and international sources. Edit portions of forthcoming law review articles about clinical education and American citizens seeking asylum abroad.

D.C. Office of the Attorney General, Office of the Solicitor General – Washington, DC ***Jan. 2023 – Apr. 2023***
Appellate Litigation Intern
- Conducted a 50-state survey of firearm statutes for a Second Amendment case. Observed oral argument and provided feedback, participated in moots. Proofread and cite checked appellate briefs.

U.S. District Court for the District of Maryland – Greenbelt, MD ***May 2022 – July 2022***
Judicial Intern to the Honorable Paula Xinis
- Drafted eight opinions and edited the drafts based on the Judge's review. Observed trials and motion hearings; discussed cases and outcomes with the Judge and law clerks.

U.S. Citizenship and Immigration Services – Chatsworth, CA ***Sept. 2018 – Oct. 2021***
Immigration Services Officer: Level 2 – Chatsworth, CA *June 2019 – Oct. 2021*
- Coordinated with Office of Chief Council attorneys in rendering legally sufficient adjudications for cases entering mandamus litigation and wrote briefs for cases being submitted on appeal. Researched statutes, case law, and regulations to ensure written decisions would be upheld in immigration court.

Immigration Services Officer: Level 1 – Sacramento, CA *Sept. 2018 – June 2019*
- Graduated in the top of six-week long immigration law course; scored 98.5% cumulatively on all tests. Wrote Standard Operating Procedure documents on various humanitarian programs.

Lutheran Social Services of North Dakota – Fargo, ND ***Sept. 2016 – Sept. 2018***
Refugee Resettlement Case Aide & Transition Specialist
- Created new annual fundraiser and chaired committee of eight team members, which raised over $12,500 in first year and over $25,000 in second. Co-facilitated monthly trainings to ensure refugee foster children had the skills and abilities to live independently post-foster care. Saw 100% rise in attendance.

SKILLS AND INTERESTS

Language Skills: Arabic (upper intermediate), French (basic)
Interests: Baking everything in Claire Saffitz's "Dessert Person," playing violin, and learning how to play tennis.

DOMITZ ADAM S 5243144 09/05

06/12/23 1 OF 1

FALL 2021

LAW-501	CIVIL PROCEDURE	04.00	A	16.00
LAW-504	CONTRACTS	04.00	A-	14.80
LAW-516	LEGAL RESEARCH & WRITING I	02.00	A-	07.40
LAW-522	TORTS	04.00	A	16.00
	LAW SEM SUM: 14.00HRS ATT 14.00HRS ERND 54.20QP 3.87GPA			

SPRING 2022

LAW-503	CONSTITUTIONAL LAW	04.00	A-	14.80
LAW-507	CRIMINAL LAW	03.00	A	12.00
LAW-517	LEGAL RESEARCH & WRITING II	02.00	B+	06.60
LAW-518	PROPERTY	04.00	A-	14.80
LAW-655	IMMIGRATION & NATURALIZATION	03.00	A	12.00
	LAW SEM SUM: 16.00HRS ATT 16.00HRS ERND 60.20QP 3.76GPA			

FALL 2022

LAW-508	CRIMINAL PROCEDURE I	03.00	A	12.00
LAW-633	EVIDENCE	04.00	A	16.00
LAW-796F	LAW REVIEW I	02.00	--	--.--
LAW-803FA	MOOT COURT EXECUTIVE BOARD	01.00	P	00.00
LAW-847	APPELLATE ADVOCACY	03.00	B+	09.90
LAW-986	SECTION 1983 LITIGATION	03.00	A	12.00
	LAW SEM SUM: 16.00HRS ATT 14.00HRS ERND 49.90QP 3.83GPA			

SPRING 2023

LAW-550	LEGAL ETHICS	02.00	A	08.00
LAW-601	ADMINISTRATIVE LAW	03.00	A	12.00
LAW-643	FEDERAL COURTS	04.00	A	16.00
LAW-769	SUPERVISED EXTERNSHIP SEMINAR	02.00	A	08.00
LAW-871SC	MOOT COURT COMPETITION	02.00	P	00.00
LAW-899	EXTERNSHIP FIELDWORK	03.00	P	00.00
	LAW SEM SUM: 16.00HRS ATT 16.00HRS ERND 44.00QP 4.00GPA			

FALL 2023

LAW-611	BUSINESS ASSOCIATIONS	04.00	--	--.--
LAW-641	FEDERAL INDIAN LAW	03.00	--	--.--
LAW-695	CIVIL TRIAL ADVOCACY	03.00	--	--.--
LAW-707A	THE SUPREME COURT	02.00	--	--.--
LAW-795IR	IMMIGRATION, RACE, & THE CONST	01.00	--	--.--
LAW-985	HOUSING LAW	02.00	--	--.--

LAW CUM SUM: 62.00HRS ATT 60.00HRS ERND 208.30QP 3.85GPA

END OF TRANSCRIPT

AMERICAN UNIVERSITY
WASHINGTON, DC

Susan Franck
Professor of Law

sfranck@wcl.american.edu
+1 202/274-4362

June 9, 2023

Clerkship Recommendation: Adam Domitz

Dear Sir / Madam:

I write to endorse Adam Domitz's application to join your chambers. With over twenty years of teaching at multiple schools, including Fordham, Vanderbilt, and Minnesota, Adam remains one of the best students I have ever had the pleasure of teaching.

I first met Adam as a student in the Fall of 2021 in my Civil Procedure course. Despite that course being 100% online, our conversations and his professionalism, both inside and outside the classroom, impressed me. He was never afraid to handle thorny questions and displayed a rare willingness to dig into substantive matters to provide responses that were both legally elegant and pragmatic. He received the highest grade in my Civil Procedure examination, and quite literally blew the grading curve out of the water on the essay portion of the examination.

Beyond his academic excellence, Adam has a unique set of interpersonal skills and emotional intelligence that should not be underestimated. I watched him skillfully navigate classroom dynamics and regularly find ways to build bridges across different constituencies. He also was never afraid to acknowledge where there was a gap in his own set of life experiences and curiously asked questions to fill the gap. For example, when struggling to understand the *Erie* and *Hanna* doctrines related to vertical choice of law, he actively sought out sessions with his peers and others to master the material. I remain impressed by Adam's meta-cognition, as I watched him have multiple lightbulb moments and simultaneously help others understand the materials using metaphors to explain the concepts in his own way. Even when I provided realistic but difficult advice, he never faltered. Instead, he thanked me every time and came back for more given his sincere desire to excel.

I was so impressed with Adam's interpersonal skills, knowledge, professionalism, and basic human decency that I asked him to serve as my Civil Procedure teaching assistant during his 3L year. Despite my sabbatical during the 2022-2023 academic year, Adam continued to keep in contact with me and diligently followed-up on working together. His persistence, politeness, and capacity to honor his multiple commitments impressed me. Given my trust in his judgment, I remain grateful that I asked him to work for me as a 1L, as I know my future students will benefit from his skills and modeling of professionalism.

Given the unique nature of working in a small office, I anticipate that Adam's interpersonal skills and cognitive rigor would likewise be a fundamental asset to your Chambers.

I recommend him to your Chambers with no reservations. I hope that you take the opportunity to interview Adam so that you can test my hypothesis. I believe it will be well worth your time.

Please feel free to contact me with any questions.

Kind regards,

Susan

Susan Franck
Professor of Law

WASHINGTON COLLEGE OF LAW
4300 NEBRASKA AVENUE, NW WASHINGTON, DC 20016
http://www.wcl.american.edu

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

The purpose of this letter is to recommend most highly Adam S. Domitz for a judicial clerkship. Adam is an outstanding third-year student at American University Washington College of Law. He is exceptionally well-prepared for the role of judicial law clerk.

I have known Adam for about a year. He was a student in my Section 1983 Litigation course and was also co-director of our First Amendment Moot Court for which I serve as faculty adviser. In both of these roles, Adam was a standout.

In the Section 1983 class, Adam proved to be a truly smart, creative thinker. While many of his classmates processed and recited cases, Adam was that rare student who really thought through the meaning of different doctrines, questioned their functioning, and explored alternative ideas. His participation elevated the level of class discussion for me and everyone else in the course. The two papers he wrote, in addition to strong technical proficiency, were insightful and thought-provoking.

In his moot court role, Adam worked with a partner to make all arrangements for a large three-day competition that brought some 30 law student teams from all over the country. It was a huge organizational effort with dozens of details and many simultaneous moving parts, from classroom reservations to hotel room bookings to food orders to judge recruitment. In addition, Adam had to review and edit the moot court problem. He handled all of these responsibilities with great organizational skill.

With this combination of impressive intellectual and analytical skill and strong organizational ability, it is not surprising that Adam was selected by his peers to be editor-in-chief of our most prestigious journal, the American University Law Review. His selection is a tribute to his leadership skills, both substantive and technical. His own Law Review comment is scheduled to be published in an upcoming issue, a further recognition of his abilities by his peers.

Adam's experience also makes him a perfect candidate for a judicial clerkship. He did a summer internship in U.S. District Court in Maryland where he was exposed to the full range of responsibility in a judicial chambers. He will gain the perspective of law firm work this summer as a summer associate at Mayer Brown. In addition to these experiences, Adam worked for four years after college, giving him the added maturity and experience of the workplace.

In every respect, Adam is exceedingly well-prepared for a judicial clerkship. His analytical ability, leadership skill, and time management strength are all complemented by his highly collegial nature, just the right combination to succeed in chambers.

Please don't hesitate to let me know if I may answer questions or offer more information. My cellphone is 240-472-2444, and my email is swermiel@wcl.american.edu.

Sincerely,

Stephen Wermiel
Professor of Practice of Constitutional Law and
Interim Director, Program on Law & Government
American University Washington College of Law

AMERICAN UNIVERSITY
WASHINGTON, DC

May 24, 2023

RE: Letter of Recommendation for Adam Domitz

Dear Honorable Judge:

Adam Domitz is an absolutely stellar candidate for a judicial clerkship. If I were in a position to hire Adam for such a role, I would do so immediately, and without hesitation.

As reflected in his application materials, Adam is the newly elected Editor-in-Chief of the *American University Law Review* and has an outstanding GPA that places him in the top 10 percent of his class. Beyond these impressive credentials, my own experience over the past year has shown me that Adam is a gifted student who brings to his work intellectual firepower, fine-tuned research and writing skills, a tireless work ethic, and a friendly and personable demeanor.

By way of background, I am a Professor of Law at the Washington College of Law (WCL) at American University, where I teach courses relating to immigration law, international law, and labor and employment law. Adam and I have worked in various capacities: he was my student in the immigration law survey course; I served as the faculty advisor overseeing his law review comment; and he has served as my research assistant since summer 2022, providing truly invaluable support on various scholarly projects. Through these different interactions, Adam has impressed me with his intelligence, analytical acumen, attention to detail, and commitment to excellence.

Without a doubt, Adam has the intellectual abilities needed to thrive as a judicial law clerk and to quickly get up to speed on a varied docket. In my spring 2022 immigration law course, Adam was the top-performing student, and received an exam grade that far exceeded the next-best score. Through his participation in that course, I witnessed Adam's ability to grasp complex legal concepts, and to navigate tricky statutory provisions. Adam was comfortable participating in class, came consistently prepared, and posed incisive questions that exposed ambiguities in the law. He was able to navigate a complex matrix of cases, statutes, regulations, and agency guidance to understand the state of the law and to apply it to distinct factual situations.

Adam's intelligence was also apparent in our work together on his law review comment. Adam delved into a timely and complex topic relating to the terrorism-related bars in the Immigration and Nationality Act, and their applicability to transnational gangs. Adam exhaustively researched existing cases and scholarly literature in the field, and crafted a comment that uses multiple lenses of analysis, including statutory interpretation and reliance on canons of construction. The drafts I reviewed reflected strong writing skills (including the ability to present coherent,

4400 MASSACHUSETTS AVENUE, NW WASHINGTON, DC 20016-8066

organized arguments) and required very minimal line editing. Unsurprisingly, Adam's comment was selected for publication and is forthcoming in the *American University Law Review*.

I have also had the pleasure of working closely with Adam on my own scholarly work. At the conclusion of the spring 2022 semester, I hired Adam to be my research assistant and to help me with various articles-in-progress. Working with him has truly been a gift. He has provided careful, detailed feedback on drafts and has researched countless narrow questions of law. He is masterful at identifying on-point sources and has a seemingly encyclopedic knowledge of Bluebook rules. This outstanding support unquestionably elevated my recent publications in the *Columbia Law Review* and the *Yale Law Journal Forum*.

Adam's intellectual gifts, which I have described above, are enhanced by his uncompromising work ethic. In all of his endeavors, Adam insists on producing a top-quality work product, and is willing to put in the time to do so. Adam's high professional standards were no doubt honed during his three years of government service prior to law school. Adam is also able to juggle multiple responsibilities, as suggested by the leadership position he holds with both the *Law Review* and the Moot Court Honor Society, along with his research assistant duties and obligations to courses and externships. His success in both academic and extracurricular endeavors is evidence of his ability to stay organized and keep on top of his tasks.

Finally, on a personal level, Adam is friendly, personable, and is also able to focus on his work – in many ways, an optimal junior colleague. During his time at WCL, I have had several conversations with Adam about his career interests. I know that he is genuinely interested in pursuing a clerkship, and will approach the work with enthusiasm and the highest standards of professionalism.

Please feel free to contact me with any questions about Adam. I can be reached at (202) 274-4459 or via email at jrathod@wcl.american.edu.

Very truly yours,

Jayesh Rathod
Professor of Law
American University
Washington College of Law

Adam S. Domitz
Washington, DC 651-356-5978
Adam.Domitz@student.american.edu http://linkedin.com/in/adamdomitz

Writing Sample

The attached writing sample is the first draft of an opinion I wrote during my internship at the U.S. District Court for the District of Maryland. The assignment entailed deciding whether to grant or deny a motion to dismiss a compliant for failure to state a claim. The plaintiff alleged her bank failed to reimburse her for fraudulent transactions in violation of the Electronic Fund Transfer Act and in breach of her contract with the bank.

The draft was completed exclusively by me and represents the opinion prior to input and review by the law clerk overseeing me and prior to review by the Judge. However, the party names, as well as the amounts and dates of transactions, have been altered to ensure confidentiality. Minor grammatical edits were also made. I received prior permission to use this writing sample. Please note that the sample is confidential and may not be distributed without permission of the Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JANE A. DOE,	*	
Plaintiff,	*	
v.	*	Civil Action No. [redacted]
GENERIC BANK,	*	
Defendant.	*	

***

MEMORANDUM OPINION

Pending before the Court in this consumer protection action is Defendant Generic Bank's motion to dismiss the Complaint. Finding no hearing necessary, *see* D. Md. Loc. R. 105.6, and for the following reasons, the Court GRANTS in part and DENIES in part Defendant's motion.

I. Background[1]

Plaintiff Jane A. Doe ("Doe") maintained a personal checking account with Defendant Generic Bank ("Bank") and conducted transactions relating to that account throughout Maryland. ECF No. 3 ¶¶ 2 & 3. Doe deposited $99,460.21 of proceeds from a sale of real property into her checking account on February 7, 2019. *Id.* ¶¶ 4–5. Following the deposit, an unknown third party made three unsuccessful attempts to withdraw funds from Doe's checking account. *Id.* ¶¶ 6–9. These attempted withdrawals were in the amount of $735,555.55 on February 10, 2019, and $38,767.68 and $32,890.19 on February 11, 2019. *Id.* ¶¶ 6–8. However, an unknown third party made two successful, yet unauthorized, withdrawals on February 12, 2020, in the amounts of $32,844.96 and $38,588.32, totaling $71,433.28. *Id.* ¶¶ 10–13. These transactions were approved by Bank despite Doe's debit card associated with the checking account not being stolen, lost, or

[1] The following Complaint facts are accepted as true and construed most favorably to Doe. *See E.I. du Pont de Nemours and Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 448 (4th Cir. 2011).

given to another person with consent to use it. *Id.* ¶¶ 13–14.

On February 27, 2019, Doe provided written notice of the unauthorized withdrawals to Bank. ECF No. 3 ¶ 15. Doe also submitted a second dispute of the withdrawals through counsel. *Id.* ¶ 16. The funds obtained through the two unauthorized withdrawals have not been returned to Doe. *Id.* ¶ 17.

Doe filed suit in the Circuit Court of Maryland for Prince Georges County on September 16, 2019, alleging violations of the Electronic Fund Transfers Act ("EFTA"), 15 U.S.C. § 1693 *et seq.*, (Count I) and a common law claim of breach of contract (Count II). ECF No. 3. Bank timely moved to remove the action to this Court. ECF No. 1. Further, Bank moved to dismiss the compliant in its entirety.[2] ECF No. 6.

II. Standard of Review

A motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the sufficiency of the complaint. *Presley v. City of Charlottesville*, 464 F.3d 480, 483 (4th Cir. 2006) (citation and internal quotation marks omitted). A complaint need only satisfy the standard of Rule 8(a), which requires a "short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). "Rule 8(a)(2) still requires a 'showing,' rather than a blanket assertion, of entitlement to relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 n.3 (2007). That showing must consist of more than "a formulaic recitation of the elements of a cause of action" or "naked assertion[s] devoid of further factual enhancement." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted) (quoting *Twombly*, 550 U.S. at 555).

When ruling on a motion to dismiss, the plaintiff's well-pleaded allegations are accepted

[2] Doe attempts to raise new facts and submit an affidavit for the first time in response to the motion to dismiss. The Court will not consider those facts in resolving Bank's motion. *See Zachair, Ltd. V. Driggs*, 965 F. Supp. 741, 748 n.4 (D. Md. 1997), *aff'd*, 141 F.3d 1162 (4th Cir. 1998) (explaining that plaintiffs are "bound by the allegations contained in [their] complaint and cannot, through the use of motion briefs, amend the complaint").

as true and viewed in the light most favorable to her. *Twombly*, 550 U.S. at 555 (internal citations omitted). "To satisfy this standard, a plaintiff need not 'forecast' evidence sufficient to prove the elements of the claim. However, the complaint must allege sufficient facts to establish those elements." *Walters v. McMahen*, 684 F.3d 435, 439 (4th Cir. 2012) (citation omitted). "Thus, while a plaintiff does not need to demonstrate in a complaint that the right to relief is 'probable,' the complaint must advance the plaintiff's claim 'across the line from conceivable to plausible.'" *Id.* (quoting *Twombly*, 550 U.S. at 570).

III. Analysis

A. The EFTA Claim: Count I

The EFTA is a "remedial consumer protection statute" intended to safeguard bank customers against fraudulent and unauthorized electronic bank transactions. *Curtis v. Propel Prop. Tax Funding, LLC*, 915 F.3d 234, 239 (4th Cir. 2019) (quoting *Phelps v. Robert Woodall Chevrolet, Inc.*, 306 F. Supp. 2d 593, 596 (W.D. Va. 2003)); *see also Widjaja v. JPMorgan Chase Bank, N.A.*, 21 F.4th 579, 581 (9th Cir. 2021). Among other provisions, the EFTA limits consumer liability for unauthorized electronic fund transfers ("the consumer liability provision"). 15 U.S.C. § 1693g(a). As such, a bank customer ordinarily is not liable more than $50.00 for an unauthorized withdrawal of funds where the customer provided the financial institution with timely notice of such a withdrawal. *Id.* (establishing three separate liability limits, of which $50.00 is the default); *id.* § 1693g(b) (placing burden of proof on financial institution to demonstrate that consumer does not fit into $50.00 liability category).

Defendant suggests that Plaintiff's EFTA claim should be dismissed because she fails to identify which provision of the EFTA was violated. However, Doe has averred that she is entitled to receive reimbursement for timely reported unauthorized transactions. *See generally* ECF No.

3. This allegation closely aligns with the consumer liability provision of the EFTA and, as such, Doe's claim will be treated as one under 15 U.S.C. § 1693g.

Defendant also argues that Doe has not alleged that the disputed transactions are "electronic fund transfers" as defined by the EFTA. ECF No. 6-1 at 3. "Electronic fund transfers" are defined as "any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account." 15 U.S.C. § 1693a(7). Further, the statute notes that the term includes "withdrawals of funds" and the relevant regulation states electronic fund transfers include "[t]ransfers resulting form debit card transactions, whether or not initiated through an electronic terminal." *Id.*; 12 C.F.R. § 1005.3(b)(v). In this case, both unauthorized withdrawals occurred "by [d]ebit card." ECF No. 3 ¶¶ 10–11. As such, Doe has alleged the unauthorized withdrawals are electronic fund transfers under the EFTA.

Doe has alleged that two unauthorized withdrawals from her checking account occurred by debit card, that she notified Bank within six days of the occurrence, and that she has yet to be refunded for the unauthorized withdrawals. These facts establish a plausible entitlement to relief under 15 U.S.C. § 1693g. As such, Doe's claim under the EFTA survives Bank's motion to dismiss.

B. The Contract Claim: Count II

Bank presents two alternative challenges to the contract claim. It contends that the claim is preempted by the EFTA or, alternatively, that Doe fails to state a claim for contractual breach under Maryland law. As to preemption, the EFTA eclipses state laws "only to the extent of the inconsistency." 15 U.S.C. § 1693q. Accordingly, a common law contract claim that provides greater protection to the consumer is not "inconsistent" with the EFTA, and thus is not preempted. *Id.* ("A State law is not inconsistent . . . if the protection such law affords any consumer is greater than the protection afforded by this subchapter."); *see also Geimer v. Bank of Am., N.A.*, 784 F. Supp. 2d 926, 931 (N.D. Ill. 2011) (finding state law claims sounding in tort and breach of contract were not preempted by the EFTA); *Bernhard v. Whitney Nat. Bank*, 523 F.3d 546, 553 (5th Cir. 2008) (noting that Congress did not "completely preempt claims relating to electronic fund transfers").

Implementing regulations provide helpful guidance in this regard. 12 C.F.R. § 205.12(b)(2) defines state law as "inconsistent" with the EFTA's requirements if such law:

> (i) Requires or permits a practice or act prohibited by the federal law;
>
> (ii) Provides for consumer liability for unauthorized electronic fund transfers that exceeds the limits imposed by the federal law;
>
> (iii) Allows longer time periods than the federal law for investigating and correcting alleged errors, or does not require the financial institution to credit the consumer's account during an error investigation in accordance with § 205.11(c)(2)(i); or
>
> (iv) Requires initial disclosures, periodic statements, or receipts that are different in content from those required by the federal law except to the extent that the disclosures relate to consumer rights granted by the state law and not by the federal law.

12 C.F.R. § 205.12(b)(2).

The breach of contract claim here meets none of these factors. *See id.* Indeed, if anything, a contract claim offers broader protection because the plaintiff enjoys a longer limitations period of three years as opposed to one year under the EFTA. *Compare* Md. Code Ann., Cts. & Jud. Proc. § 5-101, *with* 15 U.S.C. § 1693m(g). *Cf. Geimer*, 784 F. Supp. 2d at 931 (holding Illinois common law contract claims are not preempted because there is greater protection arising from longer limitations period); *Stegall v. Peoples Bank of Cuba*, 270 S.W.3d 500, 508 (Mo. Ct. App.

2008) (same). The contract claim, therefore, is not preempted by the EFTA.

Nonetheless, the contract claim fails to state a claim on which relief can be granted. While the parties to this suit seem to believe Maryland law applies, discussion of choice of law is warranted. Jurisdiction in this Court is founded on federal-question jurisdiction. *See* 28 U.S.C. § 1331. As such, the addition of this state law contract claim is exercised under supplemental jurisdiction. *See* 28 U.S.C. § 1367. "When choosing the applicable state substantive law while exercising diversity or supplemental jurisdiction, a federal district court applies the choice of law rules of the forum state." *Ground Zero Museum Workshop v. Wilson*, 813 F. Supp. 2d 678, 696 (D. Md. 2011). Therefore, Maryland choice of law rules govern.

Absent a choice-of-law provision in a contract, where causes of action sound in contract, Maryland follows the doctrine of *lex loci contractus*, applying the substantive law of the place where the contract was formed. *Allstate Ins. Co. v. Hart*, 327 Md. 526, 529 (1992); *Konover Prop. Tr., Inc. v. WHE Assocs., Inc.*, 142 Md. App. 476, 490 (2002) ("For choice-of-law purposes, a contract is made where the last act necessary to make the contract binding occurs."). It appears that the contract was formed in Maryland, though Doe does not expressly make this clear. Therefore, Maryland contract law applies to this dispute.

Under Maryland law, the elements of a claim for breach of contract are (1) contractual obligation, (2) breach, and (3) damages. *Kumar v. Dhanda*, 198 Md. App. 337, 445 (2011). To prevail on a claim for breach of contract, "a plaintiff need only allege the existence of a contractual obligation owed by the defendant to the plaintiff, and a material breach of that obligation by the defendant." *See RRC Ne., LLC v. BAA Md., Inc.*, 413 Md. 638 (2010). The Maryland Court of Appeals has held that "Maryland law requires that a plaintiff alleging a breach of contract 'must of necessity allege with certainty and definiteness *facts* showing a contractual obligation owed by the defendant to the plaintiff and a breach of that obligation by defendant.'" *Polek v. J.P. Morgan Chase Bank, N.A.*, 36 A.3d 399, 416 (2012) (quoting *Cont'l Masonry Co. v. Verdel Constr. Co.*, 369 A.2d 566, 569 (1977)).

Doe states that she contracted with Defendant to provide a checking account and debit card that was insured and could serve as a "safe depository" for her funds. ECF No. 3 ¶ 26. However, Doe does not establish when or where this contract was formed or its specific contractual provisions. Doe also claims that Bank breached its contractual obligations by processing and not refunding the unauthorized withdrawals. *Id.* ¶ 28. But Doe has not pleaded specific facts showing which contractual obligations were owed to her and precisely how they were breached. Instead, the allegations read as legal conclusions, which cannot stand under the *Twombly* standard. 550 U.S. at 555. Due to a lack of facts that establish a contractual obligation and breach, Doe's breach-of-contract claim cannot survive this Rule 12(b)(6) motion.

IV. Conclusion

Based on the foregoing, Generic Bank's motion to dismiss is GRANTED in part and DENIED in part. As to the EFTA claim (Count I), the motion is denied, and as to the breach of contract claim (Count II), the motion is granted and the claim is DISMISSED without prejudice.

A separate Order follows.

[redacted]
Date

The Honorable Paula Xinis

Applicant Details

First Name	**Benjamin**
Middle Initial	**M.**
Last Name	**Donvan**
Citizenship Status	**U. S. Citizen**
Email Address	**ben.donvan@gmail.com**
Address	**Address** Street **93 15th St Apt 1F** City **Brooklyn** State/Territory **New York** Zip **11215** Country **United States**
Contact Phone Number	**2026802837**

Applicant Education

BA/BS From	**University of Chicago**
Date of BA/BS	**June 2019**
JD/LLB From	**New York University School of Law** **https://www.law.nyu.edu**
Date of JD/LLB	**May 20, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Review of Law and Social Change**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Marden Moot Court Competition**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**No**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Miller, Arthur
arthur.r.miller@nyu.edu
212-992-8147
Sharkey, Catherine
catherine.sharkey@nyu.edu
212-998-6729
Hertz, Randy
hertz@nyu.edu
212-998-6434

This applicant has certified that all data entered in this profile and any application documents are true and correct.

BENJAMIN MISHORI DONVAN
93 15th St., Apt 1F, Brooklyn, NY 11215 • bmd338@nyu.edu • (202) 680-2837

June 12, 2023

The Honorable Jamar K. Walker
United States District Court
Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to apply for a clerkship in your chambers beginning in 2024. I am a rising third-year student at NYU where I serve as the Digital Executive Editor of the *Review of Law and Social Change*. I am particularly in the Eastern District of Virginia because I grew up in Washington, D.C., and would like to settle down in Virginia. Further, I am excited by the 'Rocket Docket,' and the chance to participate in many cases on short timelines.

I hope to use this clerkship as an opportunity to apply skills as a writer, researcher, and critical thinker that I have been building throughout my education, but especially during law school. I had the honor to work as a research assistant for Professor Arthur Miller, updating *Federal Practice and Procedure*. It meant a great deal to me that my review, analysis, and summary of hundreds of cases contingent on applications of Rule 50 resulted in a small but material contribution to the practice of law. I also reveled in the chance to TA for CivPro in the fall, and to use what I had learned over the summer to help 1Ls grow.

I would also highlight my clinical placement at the NRDC. As part of a small team working on a complicated case, creativity was just as critical to our output as deep research. I was pleased that several of my own ideas proved useful. But that was only possible with a mastery of detail, and the ability to synthesize facts and law efficiently and effectively.

As a current summer associate at Covington, I am both diving into fresh new areas, such as insurance law, data privacy, and IP disputes, and treading new ground in the more-familiar and ever-intriguing civil procedure. I am taking it all in.

I love learning, and where it concerns the law, I know I have a lot more of that to do. That is my primary goal in seeking this clerkship. I look forward to the chance to grow through experience and service.

Enclosed, please find my resume, law school transcript, writing sample, and letters of recommendation from Professors Randy Hertz, Arthur Miller, and Catherine Sharkey. I am available for an interview at your convenience, either in-person or remotely. Thank you for your time and consideration.

Respectfully,

/s/

Benjamin Mishori Donvan

BENJAMIN MISHORI DONVAN
(202) 680-2837
bmd338@nyu.edu

Local Address
93 15th St, Apt 1F
Brooklyn, NY 11215

Permanent Address
2729 Dumbarton St. NW
Washington, DC 20007

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, New York
Candidate for J.D., May 2024
Honors: *N.Y.U. Review of Law & Social Change*, Digital Executive Editor
Activities: Teaching Assistant, Civil Procedure (Fall 2022)
American Constitution Society, Membership & Media Chair
Law Revue, Actor, Writer, and Producer
Marden Moot Court Competition (Fall 2022)

UNIVERSITY OF CHICAGO, Chicago, Illinois
B.A. in History, *General Honors*; Minor in Human Rights, June 2019
Honors: Dean's List (all years)
Chicago Center for Jewish Studies Undergraduate Essay Prize (2018)
Activities: Dormitory House President (2016-2017), Dormitory House RA (2017-2019)
Run for Cover A Cappella Group, Treasurer
UChicago Glee Club, Duke

EXPERIENCE

COVINGTON & BURLING LLP, New York, NY
Summer Associate, Summer 2023
Participate in all aspects of complex commercial litigation and white-collar matters, including a pharmaceutical contractual dispute and a high-stakes Congressional investigation. Research includes projects on media law; remote international depositions and the Hague Evidence Convention; and New York law on "known loss" provisions in insurance coverage for products liability claims.

NATURAL RESOURCES DEFENSE COUNCIL, New York, NY
NYU Environmental Law Clinic, Spring 2023
Participated in all aspects of a lawsuit against a federal agency. Wrote research memoranda on Endangered Species Act consultation; Clean Water Act permitting, interstate pollution, and point sources; and Fourth Circuit pleading standards, standing requirements, and agency action review.

PROF. ARTHUR R. MILLER, NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY
Research Assistant, June 2022 – January 2023
Conducted extensive legal research in civil procedure; updated Wright & Miller's Federal Practice and Procedure treatise, Volumes 9B (FRCP 46-50), 14A (Foreign Sovereign Immunities Act), and 14AA (Jurisdiction of D.C. Courts), focusing heavily on *Palin v. NYT* and *Cassirer v. Thyssen-Bornemisza*.

GOVERNMENT ACCOUNTABILITY PROJECT, Washington, DC
Junior Fellow, February 2021 – August 2021; ***Legal Intern,*** November 2019 – June 2020
Supported attorneys in various whistleblowing and FOIA matters. Drafted legal documents and disclosures to Congress and administrative agencies on issues like gross mismanagement at Ft. Bliss EIS, politically motivated antitrust investigations at DOJ, and climate denialism at DOI.

ADDITIONAL INFORMATION

In 2020, volunteered at Public Counsel and chaired a committee for the DC Ward 2 Democrats. Hobbies include: singing and performing; writing sketches and screenplays; and homebrewing beer.

Name: Benjamin Mishori Donvan
Print Date: 06/01/2023
Student ID: N11172431
Institution ID: 002785
Page: 1 of 1

New York University
Beginning of School of Law Record

Fall 2021

School of Law
Juris Doctor
Major: Law

Lawyering (Year)	LAW-LW 10687	2.5	CR
Instructor: Colleen P Campbell			
Criminal Law	LAW-LW 11147	4.0	A-
Instructor: Randy Hertz			
Procedure	LAW-LW 11650	5.0	A-
Instructor: Arthur R Miller			
Contracts	LAW-LW 11672	4.0	B
Instructor: Kevin E Davis			
1L Reading Group	LAW-LW 12339	0.0	CR
Instructor: Trevor W Morrison, Alison J Nathan			

	AHRS	EHRS
Current	15.5	15.5
Cumulative	15.5	15.5

Spring 2022

School of Law
Juris Doctor
Major: Law

Constitutional Law	LAW-LW 10598	4.0	B+
Instructor: Daryl J Levinson			
Lawyering (Year)	LAW-LW 10687	2.5	CR
Instructor: Colleen P Campbell			
Legislation and the Regulatory State	LAW-LW 10925	4.0	B+
Instructor: Adam M Samaha			
Torts	LAW-LW 11275	4.0	A-
Instructor: Catherine M Sharkey			
1L Reading Group	LAW-LW 12339	0.0	CR
Instructor: Trevor W Morrison, Alison J Nathan			
Financial Concepts for Lawyers	LAW-LW 12722	0.0	CR

	AHRS	EHRS
Current	14.5	14.5
Cumulative	30.0	30.0

Fall 2022

School of Law
Juris Doctor
Major: Law

Corporations	LAW-LW 10644	5.0	A-
Instructor: Marcel Kahan			
Business Crime	LAW-LW 11144	4.0	A-
Instructor: Jennifer Hall Arlen			
Teaching Assistant	LAW-LW 11608	2.0	CR
Instructor: Arthur R Miller			
Economic Analysis of Public Law	LAW-LW 12695	4.0	B+
Instructor: Ryan J Bubb, David Carl Kamin			

	AHRS	EHRS
Current	15.0	15.0
Cumulative	45.0	45.0

Spring 2023

School of Law
Juris Doctor
Major: Law

Environmental Law Clinic Seminar	LAW-LW 10633	2.0	A
Instructor: Kimberly W Ong, Eric A Goldstein			
Criminal Procedure: Post-Conviction Simulation	LAW-LW 10675	4.0	A
Instructor: Randy Hertz			
Environmental Law Clinic	LAW-LW 11120	3.0	A-
Instructor: Kimberly W Ong, Eric A Goldstein			
Professional Responsibility and the Regulation of Lawyers	LAW-LW 11479	2.0	A-
Instructor: Trisha Michelle Rich			
Business Torts: Defamation, Privacy, Products and Economic Harms	LAW-LW 11918	4.0	B+
Instructor: Catherine M Sharkey			

	AHRS	EHRS
Current	15.0	15.0
Cumulative	60.0	60.0

Staff Editor - Review of Law & Social Change 2022-2023

End of School of Law Record

TRANSCRIPT ADDENDUM FOR NYU SCHOOL OF LAW
JD CLASS OF 2023 AND LATER & LLM STUDENTS

I certify that this is a true and accurate representation of my NYU School of Law transcript.

<u>Grading Guidelines</u>

Grading guidelines for JD and LLM students were adopted by the faculty effective fall 2008. These guidelines represented the faculty's collective judgment that ordinarily the distribution of grades in any course will be within the limits suggested. An A + grade was also added.

Effective fall 2020, the first-year J.D. grading curve has been amended to remove the previous requirement of a mandatory percentage of B minus grades. B minus grades are now permitted in the J.D. first year at 0-8% but are no longer required. This change in the grading curve was proposed by the SBA and then endorsed by the Executive Committee and adopted by the faculty. Grades for JD and LLM students in upper-level courses continue to be governed by a discretionary curve in which B minus grades are permitted at 4-11% (target 7-8%).

First-Year JD (Mandatory)	**All other JD and LLM (Non-Mandatory)**
A+: 0-2% (target = 1%) (see note 1 below)	A+: 0-2% (target = 1%) (see note 1 below)
A: 7-13% (target = 10%)	A: 7-13% (target = 10%)
A-: 16-24% (target = 20%)	A-: 16-24% (target = 20%)
Maximum for A tier = 31%	***Maximum for A tier = 31%***
B+: 22-30% (target = 26%)	B+: 22-30% (target = 26%)
Maximum grades above B = 57%	***Maximum grades above B = 57%***
B: remainder	B: remainder
B-: 0-8%*	B-: 4-11% (target = 7-8%)
C/D/F: 0-5%	C/D/F: 0-5%

The guidelines for first-year JD courses are mandatory and binding on faculty members; again noting that a mandatory percentage of B minus grades are no longer required. In addition, the guidelines with respect to the A+ grade are mandatory in all courses. In all other cases, the guidelines are only advisory.

With the exception of the A+ rules, the guidelines do not apply at all to seminar courses, defined for this purpose to mean any course in which there are fewer than 28 students.

In classes in which credit/fail grades are permitted, these percentages should be calculated only using students taking the course for a letter grade. If there are fewer than 28 students taking the course for a letter grade, the guidelines do not apply.

<u>Important Notes</u>

1. The cap on the A+ grade is mandatory for all courses. However, at least one A+ can be awarded in any course. These rules apply even in courses, such as seminars, where fewer than 28 students are enrolled.
2. The percentages above are based on the number of individual grades given – not a raw percentage of the total number of students in the class.
3. Normal statistical rounding rules apply for all purposes, so that percentages will be rounded up if they are above .5, and down if they are .5 or below. This means that, for example, in a typical first-year class of 89 students, 2 A+ grades could be awarded.
4. As of fall 2020, there is no mandatory percentage of B minus grades for first-year classes.

NYU School of Law does not rank students and does not maintain records of cumulative averages for its students. For the specific purpose of awarding scholastic honors, however, unofficial cumulative averages are calculated by the Office of Records and Registration. The Office is specifically precluded by faculty rule from publishing averages and no record will appear upon any transcript issued. The Office of Records and Registration may not verify the results of a student's endeavor to define his or her own cumulative average or class rank to prospective employers.

Scholastic honors for JD candidates are as follows:

***Pomeroy Scholar**:*	Top ten students in the class after two semesters
***Butler Scholar**:*	Top ten students in the class after four semesters
***Florence Allen Scholar**:*	Top 10% of the class after four semesters
***Robert McKay Scholar**:*	Top 25% of the class after four semesters

Named scholar designations are not available to JD students who transferred to NYU School of Law in their second year, nor to LLM students.

<u>Missing Grades</u>

A transcript may be missing one or more grades for a variety of reasons, including: (1) the transcript was printed prior to a grade-submission deadline; (2) the student has made prior arrangements with the faculty member to submit work later than the end of the semester in which the course is given; and (3) late submission of a grade. Please note that an In Progress (IP) grade may denote the fact that the student is completing a long-term research project in conjunction with this class. NYU School of Law requires students to complete a Substantial Writing paper for the JD degree. Many students, under the supervision of their faculty member, spend more than one semester working on the paper. For students who have received permission to work on the paper beyond the semester in which the registration occurs, a grade of IP is noted to reflect that the paper is in progress. Employers desiring more information about a missing grade may contact the Office of Records & Registration (212-998-6040).

<u>Class Profile</u>

The admissions process is highly selective and seeks to enroll candidates of exceptional ability. The Committees on JD and Graduate Admissions make decisions after considering all the information in an application. There are no combination of grades and scores that assure admission or denial. For the JD Class entering in Fall 2021 (the most recent entering class), the 75th/25th percentiles for LSAT and GPA were 174/170 and 3.93/3.73.

Updated: 10/4/2021

New York University
A private university in the public service

School of Law

40 Washington Square South, 430F
New York, New York 10012-1099
Telephone: (212) 992-8147
Fax: (212) 995-4590
Email: arthur.r.miller@nyu.edu

Arthur R. Miller
University Professor

Dear Judge:

I am writing on behalf of Ben Donovan, who is applying for a position as your clerk following his graduation from the New York University School of Law in the Spring of 2024. Based on Mr. Donovan's first-year classroom and examination performance, I invited him to be one of my full time research assistants for the summer following his first year. He also was in my Complex Litigation course this past Spring and was a very successful teaching assistant for my civil procedure course in the fall of his second year.

As a research assistant Mr. Donovan edited and updated certain portions of the annual supplementation of sections related to Federal Rules 46 through 50 in the multivolume Wright and Miller Federal Practice and Procedure treatise. In addition he helped update the Civil Procedure hornbook I coauthor, particularly the material related to those and other rules. This was part of an effort to produce a new edition, which has now been published. In the course of working on these projects, Mr. Donovan did a considerable amount of research, editing, and writing, much of which required a great deal of thought, writing ability, legal analysis, and judgment on his part.

Ben's research and writing was excellent. His work product was complete and sound, indicating considerable mental ability, a good command of research techniques, good writing, and organizational skills. He also was able to master several aspects of federal civil procedure, some of which are complex. He worked on several topics that were outside the first year procedure course and difficult for someone with only one year of law school. He writes clearly and logically with an good sense of structure and idea sequence.

Ben is bright, thoughtful, analytically sound, and takes instruction and direction well. He also is constantly aware of the value of professional improvement. Mr. Donovan is a very helpful person by nature. He is conscientious and assisted other researchers to get things done so that we could stay on schedule. Ben's work always was done in timely fashion, with care and attention to detail. He understood fully the professional character and utility of his work. He is curious about issues, both legal and non-legal. He is willing to dig though materials until he fully understands them. I consider Ben to have been a reliable research assistant.

Mr. Donovan has a solid commitment to the law as a profession. I have no doubt about his seriousness in terms of long-term career development. I am certain he will do well with his law firm experience at Covington & Burling this summer following his second year of law school. Ben is a likable and good-natured individual; he has a pleasant personality, sense of humor, and is a good conversationalist. I thoroughly enjoy his company, even though a good deal of it